VALLEY LAWYER

MARCH 2015 • $4

A Publication of the San Fernando Valley Bar Association

SFVBA's Partner Organizations

To Return or Not to Return? International Child Abduction

Earn MCLE Credit

Same Sex Marriage at the Supreme Court

www.sfvba.org

CONTENTS

VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association
MARCH 2015

Winner of the 2013-2014 NABE Luminary Award for Excellence in Regular Publications

FEATURES

COLUMN

DEPARTMENTS

VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION

5567 Reseda Boulevard, Suite 200
Tarzana, CA 91356
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

EDITOR
Irma Mejia

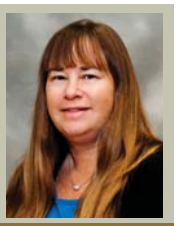
GRAPHIC DESIGNER
Marina Senderov

Valley Lawyer is published 11 times a year. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

Do You Have a Backup?

CARYN BROTTMAN SANDERS
SFVBA President



carynsanders@sbcglobal.net

IT IS HARD TO BELIEVE THAT spring is just around the corner. I promise, I will not urge spring cleaning, at least not in this article. I will instead urge you to consider taking stock of your backup and how you work in your office. The backup I am writing about is not the same as succession planning. It is emergency planning.

This issue is particularly relevant now, when we feel that we can be connected and available 24/7, and should hit home to all attorneys, whether sole practitioners, associates, heads of small firms or partners in large firms. If you have ever been to a malpractice avoidance seminar, did you give any thought to the suggestion that you have a designated backup person lined up in case you cannot perform your duties? Have you truly given it any real consideration when you were asked to designate a person on your malpractice insurance application as your backup person? While this is primarily thought to apply to sole practitioners and very small firms, it applies to all attorneys.

As a sole practitioner, I never really gave much thought to the backup attorney concept, looking at it as only required if I were too incapacitated to come to my office, or function as an attorney for an extended period of time, a possibility that I did not want to face or admit would ever be possible. After all, I negotiated a huge settlement and a commercial lease while in labor and within hours of having my daughter.

I have used appearance firms for conflicts with status conferences, court calls while on vacation, and other technological conveniences that now allow us to get our work done from virtually anywhere. As an associate in a large firm, I have to admit that I did not give the backup attorney much thought at all, since, after all, work would continue with or without me.

If you are a sole practitioner, or the head of a small firm with newer associates, or in a partnership where you practice different types of law, do you have a readily available attorney who you can call if you cannot make it to a court ordered deposition, or a mediation where people took off work or came in from out of town, or some other event that would be difficult, impossible or too expensive to continue? If you are in a firm where you are afforded a great deal of autonomy, either due to your position or experience, or just because that is how the firm operates, does someone know what you are working on, where you keep your notes, or when it is due? Do you or your associates even have personal contact information for the people they can call for help when the office is closed? It sounds so simple and such a matter of common sense, but is it?

We never like to think that something will happen to us or to a family member that will prevent us from doing our job, but it does happen. I have had a colleague that had a heart attack, a colleague with a family emergency, a colleague in a car accident, a single parent colleague with a sick child, and the list continues. We are not invincible and notwithstanding the prevalence of modern technology in our lives, cannot always be where we need to be, when we need to be there.

Instead of spring cleaning, I encourage you to take stock of the way you do business, whether it is how you run your firm, how you practice law, or how you operate within your firm. If you couldn't work tomorrow, do you have someone you could call? Could you easily direct someone in finishing that opposition? If your associate walked out, could you easily figure out what they were working on?

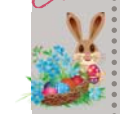
I like to think that I have a couple of backups that I can count on. I also know that I have been that backup more than once. I am happy to be able to say my backups are people that I have met through my bar association membership and activities. I encourage you to continue to use your membership to network to meet your backups or to exchange ideas on this difficult but important subject. It will help to provide you with peace of mind.

WOMEN'S HISTORY MONTH

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for April issue.	3	4 Employment Law Section Employment Agreements for In-Home Workers 12:00 NOON SFVBA OFFICE Lisa Pierson Weinberger discusses how to draft employment agreements for in-home workers such as nannies and housekeepers. (1 MCLE Hour)	5 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	6	7
8	9 Tarzana Networking Meeting 5:00 PM SFVBA OFFICE THE ESQUIRE NETWORK	10 Probate & Estate Planning Section State of the Court 12:00 NOON MONTEREY AT ENCINO RESTAURANT Probate Supervising Judge Maria Stratton will update the group. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICE	11	12	13 Cyber Fraud 12:00 NOON SFVBA OFFICE Sponsored by CITY NATIONAL BANK See page 24	14
15	16	17 Taxation Law Section Property Tax Update 12:00 NOON SFVBA OFFICE Wade E. Norwood discusses the latest regarding property tax laws. (1 MCLE Hour) Criminal Law Section Defending Sex Cases 6:00 PM SFVBA OFFICE Dr. Hy Malinek and criminal law attorney Angela Berry Jacoby guide attendees through this intricate process. (1 MCLE Hour)	18 Workers' Compensation Section Case Law Update 12:00 NOON MONTEREY AT ENCINO RESTAURANT Hon. Mark Kahn, Ret. will update the group. (1 MCLE Hour)	19 Intellectual Property, Internet & Entertainment Law Section Oracle v. Google 12:00 NOON SFVBA OFFICE David Hoffman discusses the Federal Circuit's response to the Supreme Court's ruling in *CLS Bank v Alice Corp.* (1 MCLE Hour) New Lawyers Section Pro Bono Opportunities 6:00 PM Free to SFVBA new lawyers!	20	21
22	23 Family Law Section Negotiations–Part II 5:30 PM SPORTSMEN'S LODGE Judge Hank Goldberg and Commissioner Keith Clemens, Ret. lead an interactive workshop and training to promote effective financial negotiation skills for family law attorneys. (1.5 Hours MCLE)	24 Editorial Committee 12:00 NOON SFVBA OFFICE	25 Bankruptcy Law Section Attorney's Fees 12:00 NOON SFVBA OFFICE Attorney Lewis Landau addresses best practices for recovery of post-judgment prevailing attorney's fees in bankruptcy cases. (1 MCLE Hour)	26	27	28
29	30	31  Cesar Chavez Day				

CALENDAR

APRIL 2015

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3 HAPPY PASSOVER	4
5 Happy Easter 	**Valley Lawyer Member Bulletin** 6 Deadline to submit announcements to editor@sfvba.org for May issue.	7 **Probate & Estate Planning Section** 14 **A Practical Approach to *Anderson* and *Lintz*** 12:00 NOON MONTEREY AT ENCINO RESTAURANT Mark Phillips and Dr. Steve Hunt update the group on California's new rules of testamentary capacity following the *Anderson* and *Lintz* cases. (1 MCLE Hour)	**Business Law & Real Property Section** 8 **Some Common Pitfalls in Commercial Real Estate Transactions** 12:00 NOON SFVBA OFFICE Attorney Alan Insul outlines what lawyers need to avoid in commercial real estate transactions. (1 MCLE Hour)	**Membership & Marketing Committee** 9 6:00 PM SFVBA OFFICE	10	11
12	**Tarzana Networking Meeting** 13 5:00 PM SFVBA OFFICE		**Workers' Compensation Section** 15 12:00 NOON MONTEREY AT ENCINO RESTAURANT	16	17	18
19	20	**Taxation Law Section** 21 **Tax Court Litigation** 12:00 NOON SFVBA OFFICE Steven R. Mather gives a primer. (1 MCLE Hour)	22 ADMINISTRATIVE PROFESSIONALS DAY 	23	**Bankruptcy Law Section** 24 **Update on Ninth Circuit Bankruptcy Appellate Published Opinions** 12:00 NOON SFVBA OFFICE Judge Victoria Kaufman and attorneys Shai Oved and David Shevitz headline the distinguished panel. (1 MCLE Hour)	25
26	**Family Law Section** 27 **Numbers–Part 1** 5:30 PM SPORTSMEN'S LODGE The outstanding interactive workshops continue with spring modules focusing on presenting accounting analysis and financial theories and securing favorable conclusions for your client. Approved for Legal Specialization. (1.5 Hours MCLE)	28	29	30		

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

Join the Conversation

IRMA MEJIA
Publications & Social Media Manager

editor@sfvba.org

AS EDITOR OF VALLEY LAWYER, IT IS ALWAYS SATISFYING TO WORK with writers to help make their message clear and push their work to its best. The final product is always worth the effort. I am grateful to our members for sharing their knowledge in print. However, I often hear many say they're not very skilled or sophisticated writers. What many fail to realize is that the importance of the information they have to share trumps any fancy penmanship.

Most people who write won't call themselves great writers. Most people won't win a Pulitzer Prize for their work. But that has never stopped the flow of ink on paper—or text characters on a screen. As engaged citizens in our community, we feel it important to participate in the conversations going on around us or even start new ones of our own. It's human nature to want to communicate.

I encourage you to think about what information you may have to share. It may be your experience setting up your own practice, or recollections of the mistakes you made as a young lawyer, mistakes that taught you how to be a better attorney. You may understand a particular new law better than most in your firm or believe that change in legislation may improve the lives of your clients. What you have to share is important. And I encourage you to share it in print.

In addition to working with a skilled editor, you'll also have the fame and glory that accompany the publication of your work (well, maybe it's just a little bit of fame but you'll be able to puff out your chest with pride). Publishing is an excellent way to connect with your peers and make a name for yourself. Our magazine is circulated to thousands of attorneys, judicial officers, and legal professionals through mail, email and social media.

I encourage you to write for *Valley Lawyer*. Take what you know and write it. You don't need to use fancy words. Just write your thoughts honestly and in the simplest way. Your message will ring clear and you will have added to important ongoing conversations in our legal community.

2015 EDITORIAL CALENDAR

MAY
Submission Deadline: **March 2, 2015**

JUNE
Submission Deadline: **April 1, 2015**

JULY
Submission Deadline: **May 1, 2015**

AUGUST
Submission Deadline: **June 1, 2015**
Special Insert: *Board of Trustees Election Pamphlet*

SEPTEMBER
Submission Deadline: **July 1, 2015**

OCTOBER
Submission Deadline: **August 3, 2015**

NOVEMBER
Submission Deadline: **September 1, 2015**
New Lawyers

Bonus Distribution: *State Bar Swearing-In Ceremony, Pasadena, CA*

DECEMBER
Submission Deadline: **October 1, 2015**
Cover Auction Winner/Public Service

Using the Economic Loss Rule to Your Client's Benefit

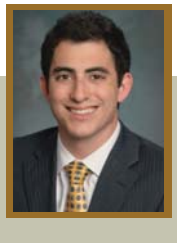
By Sam Wolf

ALL LAWYERS CAN BENEFIT from having a toolbox of general legal knowledge with which to frame a case to their client's advantage. For business attorneys the economic loss rule is a particularly useful tool. At its simplest, the rule prohibits a claimant from recovering damages for purely economic loss unless the claimant also suffered directly related physical injury to his or her person or property from another's tortious conduct.[1] First recognized in products liability cases, the economic loss rule has been applied across a broad spectrum of commercial relationships based in contract.[2]

The economic loss rule can be stated with seeming clarity, but when it comes to applying the rule, appellate courts have struggled. Moreover, exceptions and nuances vary among jurisdictions. Some jurisdictions limit the rule to products-liability, sales, and construction cases. Some do not apply its damages limitation in fraud claims.[3] The most common approach in fraud cases strikes an uneasy balance by permitting an intentional fraud action to proceed as long as the claimed damages arise from a representation of fact not contained in the parties' contract.[4]

Fraud in the inducement is an exception to the economic loss rule. This type of fraud presents a special situation in which the contracting parties appear to have negotiated, which would normally be grounds to invoke the rule's limitation of damages. But one party's ability to negotiate fair terms and reach an informed decision is undermined by the other party's fraudulent behavior.[5] Thus, the reason courts do not apply the economic-loss rule to fraud in the inducement is that the fraud destroys consent, thereby vitiating the contract.

To invoke the fraud exception, a transacting party's failure to disclose material facts serves as a basis to claim fraudulent inducement. In the context of business transactions, such as franchisor-franchisee relationships, one party (such as a franchisee), may show that there was an intentional misrepresentation by the other party (the franchisor), that the misrepresentation occurred before the contract was formed, and that the fraud concerns a matter not covered by the contract.



Sam Wolf is an attorney in the Franchise & Distribution and Business Litigation Practice Groups at the Lewitt Hackman firm in Encino. He can be reached at swolf@lewitthackman.com.

Common law fraud requires proof that a claimant reasonably relied on the defendant's false statement. To neutralize this claim, many commercial contracts include a "disclaimer of reliance" provision, requiring an investor or buyer to agree that it did not receive or rely on any extra-contractual representation from the seller.

Under California law, a contract's integration or merger clause will not bar a fraudulent inducement claim if fraud is alleged sufficiently.[6] Common statements that form the basis of fraud in the inducement claims, such as an alleged representation concerning profits a franchisee or other investor can expect, can potentially be avoided if the agreement includes statements that explicitly disclaim such representations or advice that the franchisee make its own investigation.[7] Though a merger provision and "disclaimer of reliance" clause may not be enough to win a demurrer or summary judgment, the clauses are still factors tending to disprove the justifiable reliance element of fraud.[8]

In assessing reliance, courts look to all the factual circumstances, including the parties' relative knowledge of specific facts; the speaker's position within a defendant's corporate organization and his authority to make the statements; whether the defendant gave plaintiff access to the underlying information; sophistication and experience of the plaintiff; and the context in which the statements were made.[9] Moreover, whether a plaintiff justifiably relied is judged subjectively.[10] In litigation, attorneys for franchisors or other defendants should consider the business experience of a failed franchisee or other plaintiff. If a particular plaintiff is sophisticated, a fact-intensive inquiry may be to the defendant's advantage. If a plaintiff knew or should have known that a speaker had no authority, the plaintiff could not have justifiably relied on the statement.[11]

Analytically, it is important to remember that the fact of reliance is different from the right of reliance.[12] Under California law, justifiable reliance cannot be established where the complaining party's conduct was manifestly unreasonable in light of his intelligence and information, or ready availability of information.[13] Accordingly, a plaintiff usually will be charged with increasing knowledge and sophistication as time passes, and failure to discover the fraud at some point in time will break the chain of reliance.[14] Moreover, at some point a claimant's actual or constructive knowledge of acquiescence in the fraud may be deemed ratification.[15]

A number of courts have held that is it is unreasonable as a matter of law for a plaintiff to rely on oral statements that are directly contradicted by the written contract.[16] Some courts have imposed a duty on franchisees to inquire further and obtain assurances or clarification before relying on oral statements.[17] At the other end of the spectrum, a sophisticated plaintiff who has access to the relevant facts but chooses to ignore them cannot as a matter of law have relied on the misrepresentation.[18] The evidentiary presumptions in Evidence Code Sections 622 and 623 have been cited to estopp a franchisee from pursuing claims based on alleged pre-contract misrepresentations concerning profitability where an acknowledgment in the franchise agreement states that the franchisee received "no warranty or guarantee, expressed or implied," regarding the "potential sales, income, profits or success" of the business.[19]

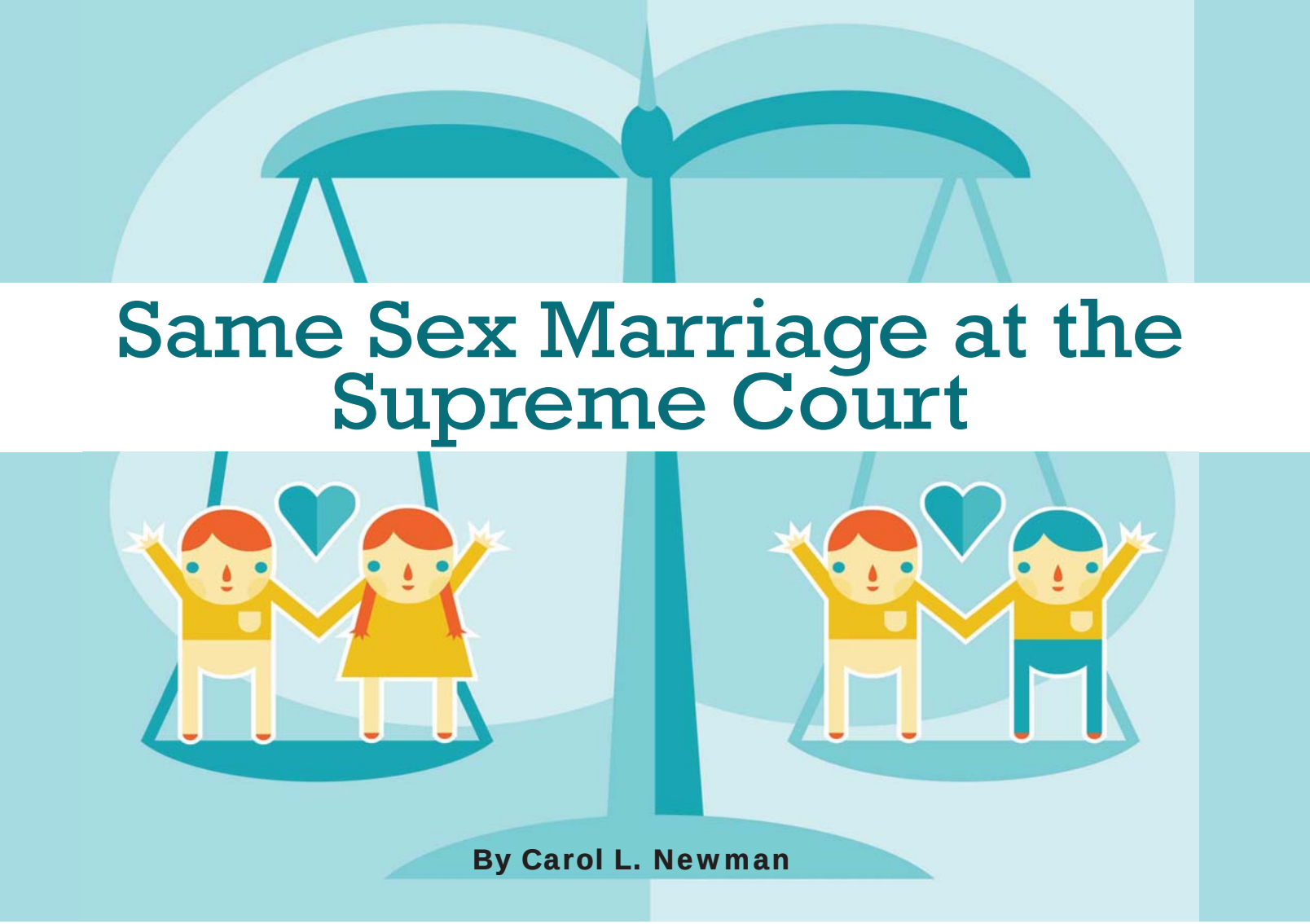
For franchise and other business attorneys, knowing the intricacies of the economic loss rule is important. Franchise lawsuits and most business litigation are usually economic in nature, and application of the rule will often narrow the scope of the claims and damages available as a remedy.[20] Litigation attorneys who possess a solid understanding of the

rule can use it to develop a framework to successfully nail down a claimant's theories at deposition or trial.

Familiarity with the rule is important to transactional attorneys as well, because the terms of the parties' agreement often become the focal point in ligation and the rule can be helpful in deciding what contractual disclaimers to include when drafting franchise and other business agreements. Quite simply, all general business litigators can benefit from being familiar with cases on the economic loss rule as a way to obtain an advantage over opponents. The stakes are far from academic as the availability of tort and punitive damages may hinge on whether or not a court decides to apply the rule.

[1] *See* R. Joseph Barton, Note, *Drowning in a Sea of Contract: Application of the Economic Loss Rule to Fraud and Negligent Misrepresentation Claims*, 41 Wm. & Mary L. Rev. 1789, 1795-96 (2000).
[2] *See. e.g*, *State Ready Mix, Inc. v. Moffatt & Nichol*, 232 Cal.App.4th 1227 (2015) (construct defect); *Food Safety Net Servs. v. Eco Safe Sys. USA, Inc.*, 209 Cal. App.4th 1118, 1132 (2012) (sales).
[3] *See, e.g.*, cases from Florida and Arizona; *Tiara Condominium Association, Inc. v. Marsh & McLennan Companies*, 110 So. 3d 399, 407 (Fla. 2013) (holding that that the economic loss rule only applied to product liability cases); *Cook v. Orkin Exterminating Co.*, 227 Ariz. 331, 334-346 (2011) (applying the economic loss doctrine to service contracts).
[4] Sean Trende, *The Economic Loss Rule and Franchise Attorneys*, Hunton & Williams—Virginia, USA (January 2008).
[5] *See* R. Joseph Barton, Note at 1789, 1810 (2000).
[6] *See* Cal. Code Civ. P. §1856(g); *see also It's Just Lunch Int'l, LLC v. Polar Bear, Inc.*, No. Civ. 03-2485 WHQ (JFS), 2004 WL 3406117 at *2-3 (S.D. Cal. Apr. 29, 2004); *It's Just Lunch Int'l LLC. v. Island Park Enter. Grp., Inc.*, No. Civ. 08-367 VAPJ (CRX), 2008 WL 4683637 at *5 (C.D. Cal. Oct. 21, 2008).
[7] *See California Bagel Co. v. Am. Bagel Co.*, 2000 WL 35798199 (C.D. Cal. 2000) (granting summary judgment on fraud and negligent misrepresentation claims of franchisee finding that written disclaimer of information concerning earnings contained in franchise agreement negated oral statements concerning actual sales); *Carlock v. Pillsbury Co.*, 719 F. Supp. 791, 1989-2 Trade Cas. (CCH) ¶ 68833 (D. Minn. 1989) (where offering circular specially recommended that potential franchisees make their own investigation to determine profitability, franchisor was not under a duty to disclose that revenues were on the decline nationally).
[8] *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.*, 95 Cal.App.4th 709, 725-726 (2002) (Under California law the fact of reliance is a question for the jury).
[9] See W Michael Garner, *Laws of Torts and Franchising*, 2 Franch & Distr Law & Prac §9:15.
[10] *Brownlee v. Vang*, 235 Cal.App.2d 465, 473–474 (1965)—test is actual effect of misrepresentation "on [plaintiff's] particular mind").
[11] *See Call Carl, Inc. v. BP Oil Corp.*, 554 F. 2d 623, 631-32 (4th Cir. 1997) (franchise agreement showed the speaker had no authority, thus, plaintiffs could not have reasonably relied on oral statements); *California Bagel Co. v. Am. Bagel Co.*, 2000 WL 35798199 at *13-14 (C.D. Cal. 2000) ("This disclaimer makes it clear that representations regarding the actual performance of existing franchises were not authorized, and thus that plaintiffs could not reasonably rely upon them.")
[12] *Vaughn v. General Foods Corp.,* 797 F2d 1403, 1415 (7th Cir. 1986).
[13] *Kahn v. Lischner,* 128 Cal.App.2d 480, 488 (1954).
[14] *Royal Business Machines, Inc. v. Lorraine Corp.*, 633 F.2d 34, 44 (7th Cir. 1980); see *Kahn, supra*, at 488 (1954) (justifiable reliance cannot be established where the conduct of the complaining party was manifestly unreasonable in light of his intelligence and information, or the ready availability of information).
[15] See W. Michael Garner, *Laws of Torts and Franchising*, 9.15 Reliance, 2 Franch & Distr Law & Pract §9.15.
[16] See, e.g., *California Bagel Co. v. Am. Bagel Co.*, 2000 WL 35798199 at *15 (C.D. Cal. 2000) ("[i]n the face of a disclaimer contained in the Offering Circular, it was unreasonable for plaintiffs to rely on representations regarding the actual profits of existing Chesapeake Bagel Stores as a matter of law."); *Rosenberg v. Pillsbury Co.*, 718 F.Supp. 1146, 1153–52 (S.D.N.Y.1989) (concluding that plaintiffs' purported reliance on oral representations was unreasonable because, inter alia, the offering circular stated that "[n]either franchisor's sales personnel nor any employee or officer of the franchisor is authorized to make any claims or statements as to the earnings, sales, or profits or prospects or chances of success that any franchisee can expect or that present or past franchisees have had").
[17] *Payne v. McDonald's Corp.*, 957 F. Supp. 749, 760-2 (D. Md. 1997) (unreasonable for franchisee rely upon projection of future profits).
[18] *See Century Pacific, Inc. v. Hilton Hotels Corp.*, 354 Fed. Appx. 496 (2d Cir. 2009) (plaintiff was sophisticated investor represented by counsel).
[19] *See California Bagel Co. v. Am. Bagel Co.*, 2000 WL 35798199 (C.D. Cal. 2000); *Cal. Evid. Code §622* ("The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto …"); *Cal. Evid. Code §623* ("Whenever a party has, by his owns statements or conduct, intentionally and deliberately led another to believe a particular thing and to act upon such belief, he is not, in any litigation arising out such statement or conduct, permitted to contradict it.")
20 Sean Trende, *The Economic Loss Rule and Franchise Attorneys*, Hunton & Williams – Virginia, USA (January 2008).

Same Sex Marriage at the Supreme Court



By Carol L. Newman

ON JANUARY 15, 2015, THE Supreme Court agreed to consolidate and hear four cases arising from the Sixth Circuit Court of Appeals on the issue of marriage equality. These cases concern marriage restrictions in the states of Michigan, Kentucky, Ohio, and Tennessee.[1] In *DeBoer v. Snyder,*[2] the Sixth Circuit had ruled in the four cases that the states' decisions to limit marriage to one man and one woman and the states' refusals to recognize same-sex marriages legally conducted in other states did not violate same-sex couples' due process and equal protection rights.[3]

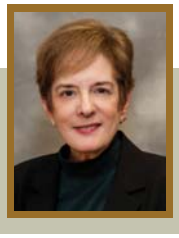
The Supreme Court said that it would hear argument on two questions:

- Does the Fourteenth Amendment to the U.S. Constitution require a state to license a marriage between two people of the same sex?
- Does the Fourteenth Amendment to the U.S. Constitution require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state?

The Supreme Court also announced that it will allow 2½ hours of argument on the matter, which is an unusually long period of time for argument. The ruling will be due at the end of June 2015.

The second question posed by the Court appears to focus on the constitutionality of Section 2 of the Defense of Marriage Act (DOMA), enacted in 1996, which allows states to refuse to give full faith and credit to same-sex marriages performed under the laws of other states.[4] Thus, the Court could hold Section 2 to be unconstitutional. That issue was left open in 2013 when the Court decided the *Windsor* case, discussed below.

Before the Sixth Circuit ruled on *DeBoer*, the Supreme Court had decided on October 6, 2014 not to



Carol L. Newman is a partner in the law firm of Alleguez & Newman, LLP, focusing on real estate litigation, business litigation, and *Marvin* (palimony) cases between unmarried couples. She is President-Elect of the SFVBA, AV-rated, and a 2015 Super Lawyer. She can be reached at carol@anlawllp.com.

grant review in seven cases arising from challenges to decisions of the Fourth, Seventh, and Tenth Circuits which recognized a federal constitutional right to same-sex marriage. The effect of that ruling, arguably, was to legalize marriage equality in those Circuits. The *DeBoer* decision is the only Court of Appeals decision to date raising a conflict. LGBT court watchers and activists have been cautiously hopeful that the Supreme Court's decision not to review the seven earlier cases and only to review the *DeBoer* decision may signal the Court's willingness now to find a federal constitutional right to same-sex marriage which would legalize same-sex marriage nationwide. However, the Supreme Court may need to reconcile previous decisions in order to do so.

The law on same-sex marriages has changed significantly in the last several years. Presently, at the time this article is being written, 37 states and the District of Columbia allow same-sex marriages to be performed. In most of these states, the right to marriage equality has been established by court decisions striking down marriage bans. California is one such state.[5] About 70% of Americans now live in states where same-sex marriage is legal, and an untold number of same-sex couples living in other states have traveled to states where marriage is legal in order to marry.

Thousands of same-sex marriages have been performed nationwide in the last few years. Nevertheless, because not all states perform same-sex marriages or recognize same-sex marriages performed elsewhere, the current law relating to such marriages is a crazy-quilt of inconsistencies across the United States.

The marriage cases now before the Court ultimately stem from *Loving v. Virginia* (1967).[6] In that case, the Supreme Court ruled that miscegenation laws enacted by the state of Virginia to prevent marriages between persons of different races violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In making its ruling, the Court stated:

> *The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.*
>
> *Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. . . . To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principal of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law.*[7]

Despite this broad ruling extolling marriage as one of the "vital personal rights" and "basic civil rights of man," the Supreme Court in 1972 appeared to reject the concept of marriage equality for LGBT people in *Baker v. Nelson*.[8] In that case, two men in Minnesota sought a marriage license from the state. When that request was denied, they filed a lawsuit contending that the denial of their request violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

The Minnesota Supreme Court rejected both claims, and distinguished the *Loving* case by stating, "[T]here is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex."[9] The plaintiffs appealed to the U.S. Supreme Court, which rejected their challenge with a one-line order stating that the appeal did not raise "a substantial federal question."[10] This case has never expressly been overturned.

Over the succeeding years, the Supreme Court issued several decisions recognizing the rights of LGBT people.[11] Over this same period of time, social attitudes have changed, providing greater acceptance to lesbians and gays, including with respect to marriage, which was once considered a pipe dream.

In 2013, the Supreme Court issued its most far-reaching decision yet on the issue of LGBT rights in *U.S. v. Windsor*,[12] which held Section 3 of DOMA to be unconstitutional by a vote of 5-4. Section 3 of DOMA, enacted in 1996, had amended the Dictionary Act of the United States Code to define "marriage" as "only a legal union between one man and one woman as husband and wife," and "spouse" as "a person of the opposite sex who is a husband or a wife."[13]

On February 9, 2015, the Supreme Court decided that same-sex marriages would begin in a 37th state. Significantly, the state is Alabama, the first state to allow such marriage in the Deep South.

A federal judge in Alabama had struck down the state's same-sex marriage ban in January. Alabama sought a stay of the ruling, but the Supreme Court, with only Justices Antonin Scalia and Clarence Thomas dissenting, turned down the stay. While this may be a sign that the Supreme Court is poised to mandate marriage equality nationwide, nothing is certain.

At press time, Alabama's Chief Justice had ordered judges to refuse to issue marriage licenses to same-sex couples, but some counties in Alabama were nevertheless issuing licenses. A constitutional showdown may be inevitable.

The effect of this amendment was to deny the protection of more than 1,000 federal laws and regulations to lesbians and gays even if they were able to marry legally.

In *Windsor*, two New York residents, Edith Windsor and Thea Spyer, had legally wed in Canada in 2007, and the State of New York recognized their marriage. Spyer died in 2009 and left her entire estate to Windsor. Windsor sought to claim the federal estate tax exemption for surviving spouses, but was barred from doing so by Section 3 of DOMA. She paid $363,053 in estate taxes and sought a refund, which the IRS denied. She then brought this lawsuit for a refund, contending that Section 3 of DOMA violated the principles of equal protection in the Fifth Amendment. The District Court found Section 3 unconstitutional and ordered the U.S. Treasury to refund Windsor's tax with interest. The Second Circuit affirmed.

The Supreme Court held that Section 3 of DOMA was unconstitutional as a deprivation of liberty of the person under the Due Process Clause of the Fifth Amendment.[14] But in reaching that decision, the Court heavily emphasized that laws regulating marriage always were and remain the province of the states. The Court stated:

> *State laws defining and regulating marriage, of course, must respect the constitutional rights of persons, see, e.g., Loving v. Virginia . . .; but, subject to those guarantees, 'regulation of domestic relations' is 'an area that has long been regarded as a virtually exclusive province of the States. . . .*
>
> *Consistent with this allocation of authority, the Federal Government, through our history, has deferred to state-law policy decisions with respect to domestic relations. . . .*
>
> *The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.' . . .*
>
> *Against this background DOMA rejects the long-established precept that the incidents, benefits, and obligations of marriage are uniform for all married couples within each State, though they may vary, subject to constitutional guarantees, from one State to the next. . . .*
>
> *What has been explained to this point should more than suffice to establish that the principal purpose and the necessary effect of this law are to demean those persons who are in a lawful same-sex marriage. This requires the Court to hold, as it now does, that DOMA is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution.*
>
> *The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity*.[15]

Thus, if the Court is going to decide the first question that it has raised now—the ultimate question whether the Fourteenth Amendment requires a state to license a marriage between two persons of the same sex—it may have to reconcile the rights of states to regulate marriage, which it so heavily touted just two years ago in *Windsor*, with its 1967 pronouncement in *Loving* that marriage is an equal right, one of the "vital personal rights" and "basic civil rights of man."[16] As the Court stated in *Windsor*, "State laws defining and regulating marriage, of course, must respect the constitutional rights of persons," citing the *Loving* case.[17] Perhaps that statement, which

was mere dicta in *Windsor*, signals how the Court is going to reconcile these competing principles—if in fact it does so.

On the other hand, the Court could decline at this point to decide the first question posed, and instead decide only the narrower second question posed: whether states must recognize out-of-state marriages from jurisdictions with marriage equality. An affirmative answer to that question would in some respects moot the first question, as forcing states to give full faith and credit to same-sex marriages performed elsewhere would in effect permit any same-sex couple residing in the United States to get married (somewhere) and to be treated as married in the state where they live. But that would not stop states from attempting to pass laws once again restricting the right to marry in those states, including states where marriage is now legal because of court decisions.

At least it is unlikely that the Court will void the marriages already legally performed. In any event, one way or the other, this case is sure to be one of the most talked-about in years.

---

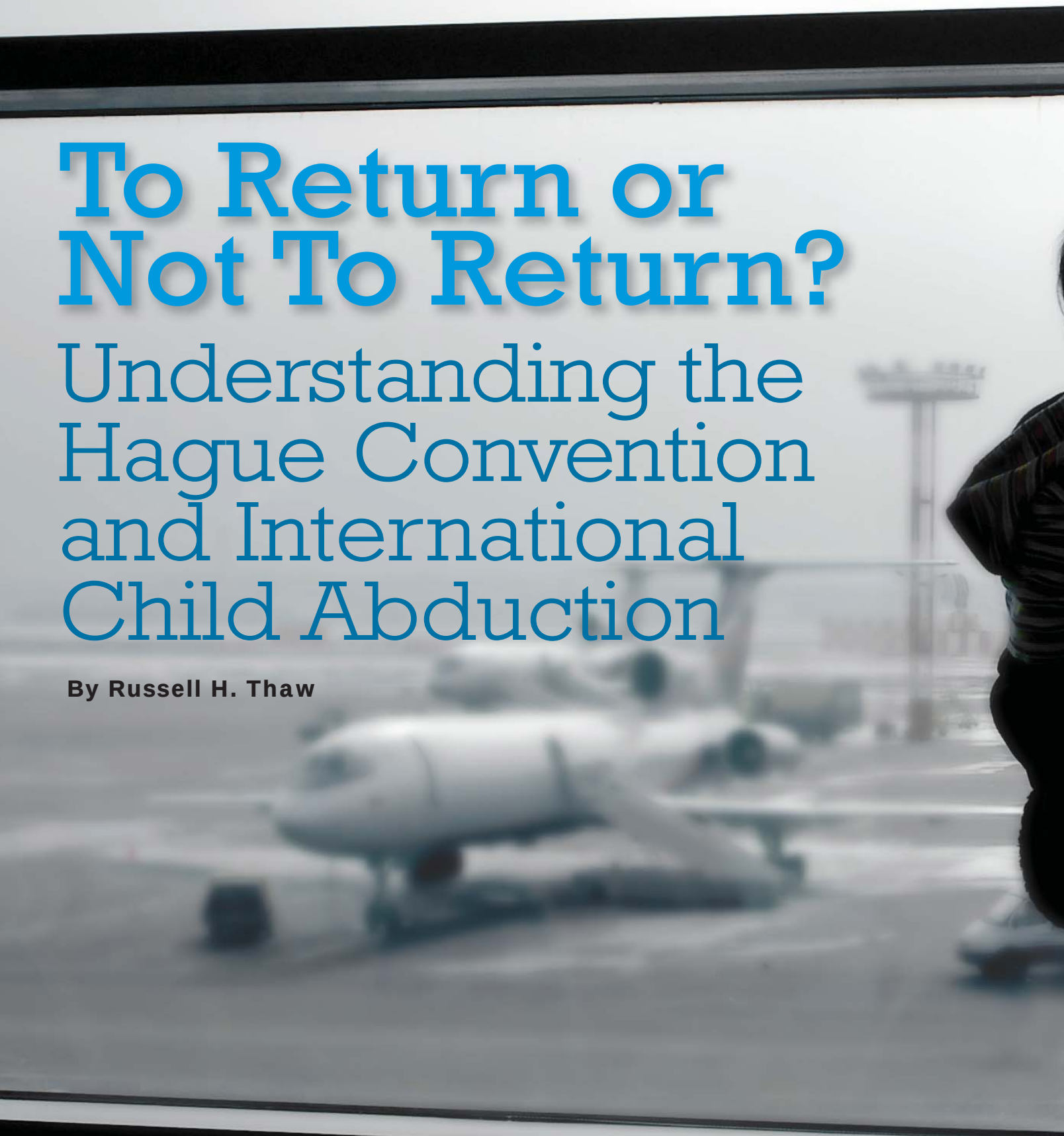
[1] *DeBoer v. Snyder* (6th Cir. 2014) 772 F.3d 388, cert. granted sub nom. *Bourke v. Beshear* (January 16, 2015)____ U.S. ___, 2015 WL 213651.
[2] *DeBoer*, supra.
[3] *Ibid* at 403-421.
[4] 28 U.S.C. §1738C.
[5] *Hollingsworth v. Perry* (2013) ___ U.S. ___, 133 S.Ct. 2652 (Supreme Court let stand the Ninth Circuit's decision striking down Proposition 8, because appellants lacked standing to challenge that decision).
[6] *Loving v. Virginia* (1967) 388 U.S. 1, 87 S.Ct. 1817.
[7] *Ibid* at 1824 [citations omitted].
[8] *Baker v. Nelson* (1972) 409 U.S. 810, 93 S.Ct. 37.
[9] *Baker v. Nelson* (1971) 291 Minn. 310, 191 N.W.2d 185, 187.
[10] 409 U.S. at 810, 93 S.Ct. 37.
[11] *See, e.g., Romer v. Evans* (1996) 517 U.S. 620, 116 S.Ct. 1620 (holding that a voter-approved amendment to the Colorado Constitution prohibiting laws to protect homosexuals from discrimination violated the Fourteenth Amendment), and *Lawrence v. Texas* (2003) 539 U.S. 558, 123 S.Ct. 2472 (holding sodomy laws unconstitutional under the Fourteenth Amendment; homosexuals have a right to engage in consensual sexual activity in the privacy of their homes).
[12] *U.S. v. Windsor* (2013) ___ U.S. ___, 133 S.Ct. 2675.
[13] 1 U.S.C. §7.
[14] *Windsor*, *supra* at 2695.
[15] *Ibid* at 2691-2696 (most citations omitted).
[16] *Loving, supra* at 12; 87 S.Ct. at 1824.
[17] *Ibid* at 2691.

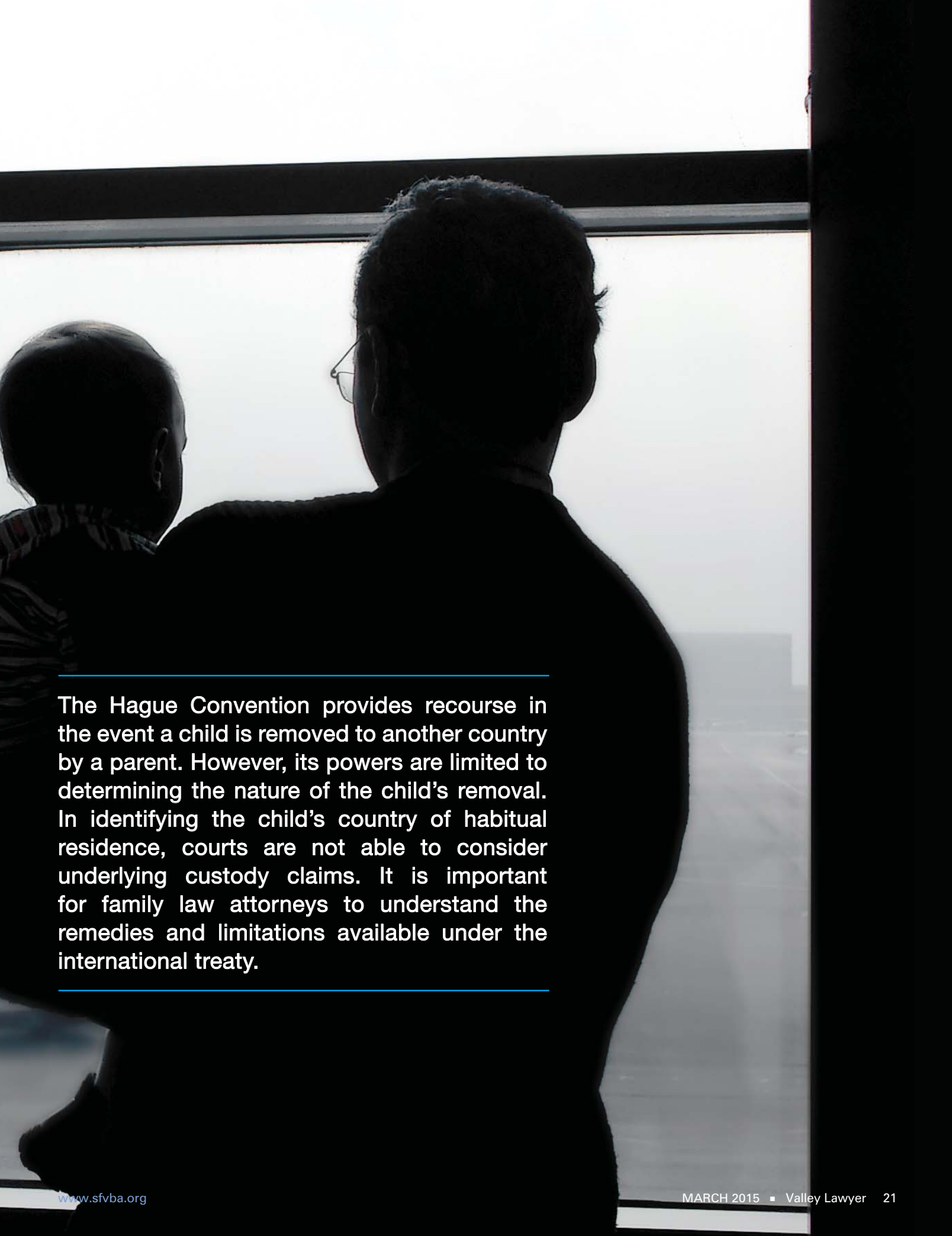
By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 29.

To Return or Not To Return?

Understanding the Hague Convention and International Child Abduction

By Russell H. Thaw





The Hague Convention provides recourse in the event a child is removed to another country by a parent. However, its powers are limited to determining the nature of the child's removal. In identifying the child's country of habitual residence, courts are not able to consider underlying custody claims. It is important for family law attorneys to understand the remedies and limitations available under the international treaty.

THE HAGUE CONVENTION ON CIVIL ASPECTS of International Child Abduction (the Hague Convention) provides a uniform law which 80 countries have adopted. It is used to compel return of a child wrongfully removed from his or her country of habitual residence. An action may be brought within the jurisdiction of a contracting nation when a child has been wrongfully removed. Under the Hague Convention, courts consider only that a child was improperly removed, not the merits of any underlying custody claim.

The International Child Abduction Remedies Act (ICARA) is legislation implementing the Hague Convention in the United States.[1] If it is determined a child has been wrongfully removed from their country of habitual residence (the equivalent of a "home state" under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)), the remedy is immediate return of the child.

While the Hague Convention provides a method for the return of abducted children, it fails to provide an adequate appeals process in the event an error is made when determining a child's country of habitual residence. Yet it is the determination of the country of habitual residence that is often outcome determinative to the issue of custody.

Through the study of four recent cases brought under the Hague Convention, this article explores the remedies and limitations of the international convention and highlights a significant issue: What happens if the court makes an error in determining the child's country of habitual residence under the Hague Convention?

Lozano v. Montoya Alvarez

The case of *Lozano v. Montoya Alvarez*[2] is noteworthy for demonstrating that when a child is abducted by one parent to another country, the other parent may file a petition in that country for the return of the child pursuant to the Hague Convention. However, that petition must be filed within a year of the abduction, and if the country of habitual residence is determined to be elsewhere, the court will order the immediate return of the child. But if the petition is filed after the one year period, the court will still order the return of the child "unless it is demonstrated the child is now settled in its new environment."[3]

In *Lozano v. Montoya Alvarez*, the child's parents resided with their daughter in London until November 2008 when the mother left with the child for a women's shelter. In July 2009, the mother and child relocated to New York. The father did not find them until November 2010, more than 16 months after they had left Britain. The father then filed his petition for return in the Southern District of New York. Finding the petition was filed more than a year after the child's removal, the court denied the father on the basis that the child was settled in New York. It also held that the one-year period could not be extended by equitable tolling. The Second Circuit affirmed.

The U.S. Supreme Court affirmed by stating that the father had reason to know the mother's whereabouts in New York but nonetheless delayed bringing his action. Even though it determined the mother had abducted the child, the Court stated that the "return remedy" under the Hague Convention is not absolute. Article 13 of the Hague Convention excuses the return of a child in cases where the child is settled in a new environment; in cases where the petitioning parent was not exercising his or her custody rights; in cases where returning the child would put him or her in "in an intolerable situation"; and in cases in which returning a child would violate "fundamental principles relating to the protection of human rights and fundamental freedoms."[4]

Narrowly construed, there are only few remedies available under the Hague Convention. If a petition for the return of a child is filed within one year, the child will be returned to his or her country of habitual residence, unless the applicant failed to exercise court ordered visits, or if returning the child to the state of habitual residence would place him or her in danger or discomfort. Return of the child will also not occur if the state of habitual residence fails to protect fundamental principles relating to human rights and freedom.

If a petition is not filed within one year, the child will nonetheless be returned unless it is demonstrated the child has become settled in his or her new location. Further, the one year period for filing of a petition will not be extended unless it is shown the abducting parent actively concealed the child, and the other parent used due diligence when attempting to locate the child.

Abbott v. Abbott

In *Abbott v. Abbott*,[5] the Supreme Court held that a parent's *ne exeat* right, or the right to prevent a child from leaving a country, is a right to custody under the Hague Convention.

The parties in *Abbott* had a child born in Hawaii in 1995 to a British citizen father and a U.S. citizen mother. The Abbotts relocated to Chile, where the parents separated. The mother was awarded primary custody, while the father was awarded weekend and summertime visitation. The Chilean court made a *ne exeat* order restricting either parent from removing the child from Chile.

Russell H. Thaw has practiced family law for 30 years and is an associate with the Reape-Rickett Law Firm in Valencia. Thaw received his law degree from the San Fernando Valley College of Law in 1980. He can be reached at rthaw@reaperickett.com.

NARVER

Providing SFVBA members With exclusive Lawyers Professional Liability programs.

ALL LAW FIRMS

COMPETITIVE PRICING

ALL AVAILABLE LIMITS OF LIABILITY

OPTIONAL DEFENSE COSTS IN ADDITION TO THE LIMITS OF LIABILITY

DEFENDANTS REIMBURSEMENT COVERAGE

PERSONAL INJURY COVERAGE

FREE TAIL FOR RETIREMENT, DEATH, OR DISABILITY

COVERAGE ENHANCEMENT DESIGNED SPECIFICALLY FOR SFVBA MEMBERS

Narver Insurance is committed to providing the SFVBA members with diverse, niche specialty insurance products, offered through exclusive Lawyers Professional Liability Insurance programs.

Narver products are provided through insurance companies with an A.M. Best "A" rating. Narver products and services deliver long-term profitability utilizing 100 years of unique liability insurance experience to the table.

Each of our advisors below has decades of experience in insurance broking.

Call us today for a second opinion consultation or a quote at (626) 943-2200 or visit our website at www.narver.com.

Narver Insurance is a supporter of the San Fernando Valley Bar Association.

Wesley Hampton
whampton@narver.com

Diane Wood
dwood@narver.com

Debra Mondragon
dmondragon@narver.com

Crystal Veiga
cveiga@narver.com

Michelle Mitchikoff
mmitchikoff@narver.com

In 2005, the father tried to obtain more visitation time. In response, the mother moved the child to Texas without permission from the father or the court. The father subsequently filed a petition in the United States for the return of the child.

In ruling that a *ne exeat* order is tantamount to a "right to custody" under the Hague Convention, the Supreme Court overruled the Fifth Circuit Court of Appeals and determined the threshold question to be whether the child was wrongfully removed from Chile in violation of the father's right of custody as awarded by the country of habitual residence.

The Supreme Court determined that a *ne exeat* order provides a right of custody, and thus the father had "decision-making authority regarding the child's relocation."[6] In other words, the country issuing the *ne exeat* order is the child's country of habitual residence compelling the return of the child under the Hague Convention unless the other parent can establish one of the exceptions noted above.

This highlights a very important aspect of the Hague Convention. A hearing under the Hague Convention is limited to a finding of the child's country of habitual residence. The reason is belief that most, if not all information relating to the child will be found in the country of habitual residence. Therefore, a finding regarding habitual residence is very much like a finding of home state jurisdiction under the UCCJEA in that such finding determines where the issue of custody will be decided.

Most believe a decision regarding the country of habitual residence under the Hague Convention is all but outcome determinative on the issue of custody. The sheer distance involved between countries limits the ability of the non-custodial parent to spend time with the child. The cost of litigation includes not only travel but cost of temporarily remaining in the host country.

Further, many believe the place of habitual residence will favor its own citizens when fashioning custody and visitation orders. Thus it is no wonder parents fiercely contest the issue of habitual residence. But what if the decision regarding country of habitual residence is wrongfully decided?

Larbie v. Larbie

In the case of *Larbie v. Larbie*,[7] the Court clearly set forth the definition and meaning of cuntry of habitual residence.

The child's mother filed a petition under the Hague Convention seeking return of her son to the United Kingdom. The U.S. district court ordered the return of the child to the mother's care, thus reversing a custody order made in a Texas court. This precipitated exactly the type of international custody dispute the Hague Convention is designed to avoid.

The district court ruled that the mother had met her burden under the Hague Convention by showing that the father "wrongfully retained" the child in the United States.[8] Further, the district court refused to stay its order because it decided that any appeal would be moot.

But the Fifth Circuit Court of Appeals held that the father's appeal was not moot, stating that compliance with a court order

does not necessarily moot an appeal "if it remains possible to undo the effects of compliance or if the order will have a continuing impact on future action."[9] It further explained that the Hague Convention and British law provide a "mechanism for enforcing a judgment by this court or the district court on remand."[10]

The mother argued that the case of *Bekier v. Bekier*,[11] a decision from the Eleventh Circuit, should be applied and should result in the same outcome: that the father's appeal be moot. But the Fifth Circuit disagreed, stating that the Hague Convention had two primary goals: "to secure the prompt return of children… and to ensure that rights of custody and of access under the law… are effectively respected."[12]

There is potential conflict in the objectives of the Hague Convention. When a parent removes a child from his or her country of habitual residence, and thereafter wishes to avoid return under the Hague Convention, it may be in that parent's best interest to conceal the child and allow it to settle into the new environment to make the return of the child impermissible under the very same international convention. This is in total disharmony with the spirit of the Hague Convention.

While the Hague Convention is not a place for decisions regarding custody, characterization of the removal of a child as wrongful is clearly subject to the existence of the other parent's custody right. Thus, refusal to return a child to its country of habitual residence after a stay abroad is an equal offense as the removal of a child from its country of habitual residence by a person not entitled to custody of the child.[13]

Under the terms of the Convention, a removal or retention is considered wrongful when "it is in breach of rights of custody attributed to a person . . . under the law of the State in which the child was habitually resident . . . and at the time of removal or retention those rights were actually exercised… or would have been so exercised but for the removal or retention."[14] Rights of custody should not be confused with rights of access which allow a parent "the right to take a child for a limited period of time to a place other than the child's habitual residence."[15]

The court defined a Hague Convention inquiry as containing three important elements. The petitioner must demonstrate that he or she has custody rights as authorized by the country of habitual residence; that the petitioner was exercising those rights; and that the respondent took the child or kept the child away from the child's country of habitual residence.

Respondents have very limited affirmative defenses available. These include demonstrating that the petitioner was not exercising his or her custody rights at the time the child was removed or demonstrating that the petitioner had agreed to the child's removal. Under these circumstances, the "court has no obligation to order a child's return."[16]

The Fifth Circuit concluded in *Larbie* that the Hague Convention inquiry as conducted by the district court generated the unintended effect of negating the custody order previously issued by a state court, thus violating the father's previously established custody right. It is important to note the Fifth

Circuit's focus on the Hague Convention was not used as a method to establish child custody, but rather to determine the proper forum where the issue of custody should be adjudicated. The *Larbie* court noted that time spent in a place in which a child has been wrongfully removed had little value in determining the child's country of habitual residence.

Chafin v. Chafin

The table was set for the United States Supreme Court to step in and resolve the diametrically opposed conclusions reached by the Fifth and Eleventh Circuit Courts of Appeal, as set forth in the *Larbie* and *Bekier* decisions. This was accomplished in the case of *Chafin v. Chafin*.[17]

In *Chafin*, the child's father was a soldier serving with the U.S. Army. While stationed in Germany he met and married a Scottish woman. Soon after having a child, the father was transferred to Afghanistan and the mother moved with the child to Scotland where they lived for a year. Once the father's tour was completed, he was transferred to the United States and stationed in Alabama. The mother immigrated to the United States to join the father. However, the couple's relationship was soon in trouble and the mother was arrested on several occasions for public drunkenness and assault. The mother eventually was deported to Scotland, while the child remained with her father in Alabama.

The mother filed a petition in the federal district court under the Hague Convention, alleging that Scotland was the child's country of habitual residence and the proper jurisdiction to determine the issue of custody. A judge agreed with her and ordered the child's return. The mother and child left the same day, and upon arriving in Scotland immediately obtained orders enjoining the child's removal from the country. In other words, the mother obtained a *ne exeat* order.

The facts in *Chafin* are similar to those in the *Larbie* case. In *Larbie*, the mother moved to Texas to reside with the father and their son. The couple divorced in a Texas court, which entered custody orders regarding the child. During the pendency of the proceeding, the mother temporarily relocated to England. Once the father left the military, the Texas court made custody orders in his favor. Soon thereafter, the mother petitioned a federal district court for the return of the child to England, which she claimed was his country of habitual residence.

Similarly in *Chafin*, the father was a member of the armed forces stationed in Afghanistan, after which he was reassigned to Alabama. The mother applied for and received the right to permanently reside in the United States with the couple's minor child. When the marriage broke down, the couple divorced in a state court in Alabama, which awarded the father custody of the child. Thereafter, the mother's petition to the district court for removal of the child to Scotland under the Hague Convention was granted.

The father appealed to the Eleventh Circuit Court of Appeals alleging that the child's country of habitual residence was the United States, and specifically Alabama. However, the Eleventh

Circuit dismissed the appeal as moot, rationalizing under *Bekier* that because the child had moved to Scotland, a court in the United States had no power to order his or her return to the United States.

The Supreme Court granted certiorari on the issue of mootness. The question decided was not whether relief would be effectual, but rather whether there remained any controversy between the parties. The mother argued the case was moot because the district court had no authority to issue a "re-return" order for the child. In disagreeing, the United States Supreme Court stated that the mother confused mootness with the merits of the case.

The Court ruled that the father's claim for re-return of the child was not "so implausible that it was insufficient to preserve the [U.S. Court's] jurisdiction" to make further orders, nor his prospects of success so attenuated as to render the case moot. The Court vacated the previous judgment and remanded the case to the lower court.

In making its decision, the Supreme Court ruled that "U.S. courts continue to have personal jurisdiction over" the parties and can make further orders under threat of sanctions.[18] Thereafter, the mother might decide to comply and return the child, but even if enforcement were uncertain, that alone did not render the case moot.

One of the central ideas under the Hague Convention is determination of the country of habitual residence, because that becomes the forum where decisions regarding custody take place. This often results in contested litigation, as many believe the parent with stronger ties to the decision making forum will have an advantage in any subsequent custody hearing. To determine country of habitual residence, some courts in the United States focus on the parents' last shared intention as to where they would live. This test has been used by the First, Second, Fifth, Seventh, Ninth, and Eleventh Circuit Courts.

If it is true that the last shared intention of the parents determines their country of habitual residence, then Alabama seems to have been the clear choice of the Chafins. The mother submitted an application for residency in the United States, which was granted, and she thereafter lived as a legal resident in the United States for more than a year. Her deportation resulted from violations of the law and should have played no part in any subsequent determination of the parties' country of habitual residence.

The district court simply made an error when deciding that the child's country of habitual residence was Scotland. The Eleventh Circuit should have reversed the lower court's decision and remanded for further proceedings before a new bench officer. If that had been done in an expedited manner, the child may never have been taken outside the United States.

Because the child was taken and years passed before the father received relief from the Supreme Court, the child undoubtedly had become settled in Scotland. Avoiding re-return of the child under this scenario is one of the stated goals of the Hague Convention, and is a matter of legitimate concern. As the

Larbie court pointed out, "[T]he question whether a child is in some sense 'settled' in its new environment is so vague as to allow findings of habitual residence to be based on virtually any indication the child has adjusted to his new life there."[19] That is why a parent flees the jurisdiction of the other parent the same day they receive an order allowing removal. The parent knows removal is fundamental to beginning the process of adjusting and settling into a new environment, thus making it more unlikely that any court, whether under the Hague Convention or other set of laws, would order the return of the child.

To prevent this, the United States Congress should amend the International Child Abduction Remedies Act to create time limits for appeal, as was suggested by Chief Justice Roberts in the *Chafin* decision. There should be an absolute sixty-day time limit for the processing of any appeal, as well as provisions for posting a bond and issuance of an order regarding removal of the child pending outcome of the appeal. The current average for these appeals is two years, which is completely unacceptable, as it allows the child time to adjust to the place of his or her removal, as occurred in the *Chafin* case.

If children are allowed to relocate during the pendency of an appeal, they will adjust to their new environment, rendering any re-return difficult, if not detrimental. This subverts the very purpose of the Hague Convention. Yet under current law, errors have been made making this outcome a possibility. The solution in the Eleventh Circuit was to cut off any appeal as moot, leaving no remedy. The Supreme Court's ruling in *Chafin* leaves the possibility of a different result. But therein lays the conundrum: if the appellate court determines the country of habitual residence to be the jurisdiction of the parent that was left-behind, then re-return of the child is in order. But what about the fact the child has now settled in her new residence?

The only solution is to amend current law to hasten the process and avoid drawn out appeals. In fact, expedited appeals on the issue of country of habitual residence should be made part of the Hague Convention itself so all contracting nations agree to an accelerated process for appeals. Without that amendment, the very purpose of the Hague Convention is subverted as courts effectively throw out the baby out with the bath water.

---

[1] 42 U.S.C. §§11601-11610.
[2] 134 S. Ct. 1224 (2014).
[3] *Ibid* at 1238.
[4] *Ibid* at 1229.
[5] 560 U.S. ___ (2010).
[6] *Ibid.*
[7] 690 F.3d 295 (2012).
[8] *Ibid* at 304.
[9] *Ibid* at 305.
[10] *Ibid*.
[11] 248 F.3d 1051 (2001).
[12] *Larbie, supra*, at 306.
[13] *See Ibid* at 306-307.
[14] *Ibid* at 307.
[15] *Ibid*.
[16] *Ibid* at 307-308.
[17] *Chafin v. Chafin* 133 S.Ct. 1017 (2013).
[18] *Ibid* at 1025.
[19] *Larbie, supra*, at 311.

Test No. 77

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. The main purpose of the Hague Convention is to compel prompt return of a child wrongfully removed from its country of habitual residence.
❑ True ❑ False

2. The Supreme Court in *Chafin* resolved all issues between the Fifth and Eleventh Circuit Courts when determining a child's country of habitual residence under the Hague Convention.
❑ True ❑ False

3. Once it is determined a child has been abducted, he must be returned to his country of habitual residence if it is determined it was the child's place of residence for the last year.
❑ True ❑ False

4. When a court determines a child was wrongfully removed from its country of habitual residence, the child must be returned within 45 days.
❑ True ❑ False

5. Under the Hague Convention, the one year period for filing a petition will not be extended unless it is shown the abducting parent actively concealed the child, and the parent seeking return exercised due diligence when attempting to locate the child.
❑ True ❑ False

6. A hearing under the Hague Convention, with certain exceptions, is limited to a finding of the child's country of habitual residence.
❑ True ❑ False

7. The term *ne exeat* is defined as the right to travel with a child outside the country of habitual residence.
❑ True ❑ False

8. A finding of country of habitual residence under the Hague Convention is similar to a finding of home state under the UCCJEA.
❑ True ❑ False

9. Under the Hague Convention, an award of custody is limited to decision-making authority regarding a child's medical care, religion and schooling.
❑ True ❑ False

10. Under the Hague Convention, a court decision regarding the child's country of habitual residence has little to do with the outcome of a subsequent custody hearing.
❑ True ❑ False

11. The Fifth Circuit Court of Appeals in *Larbie* found that another purpose of the Hague Convention is to ensure that rights of custody and access under the law of one contracting state are effectively represented in the other contracting states.
❑ True ❑ False

12. Part of the right of custody under the Hague Convention is that a parent claiming that right must have actually exercised visitation.
❑ True ❑ False

13. Under the Hague Convention, a retention is wrongful when it is in breach of custody rights awarded by the state where a person currently resides.
❑ True ❑ False

14. The right of custody differs from the right of access under the Hague Convention.
❑ True ❑ False

15. Determining if a child is settled in his new environment is a difficult standard to meet.
❑ True ❑ False

16. If one parent is in the military, the Hague Convention provides a different standard for determining the country of habitual residence.
❑ True ❑ False

17. The U.S. Supreme Court granted certiorari in *Chafin* to determine whether any controversy remained between the parties.
❑ True ❑ False

18. Violation of a parent's right of access under the Hague Convention will prompt the return of the child to its country of habitual residence.
❑ True ❑ False

19. Under the Hague Convention, one way to find a child's country of habitual residence is to determine the parents' last shared intention about where to raise the child.
❑ True ❑ False

20. Once a court allows a parent to remove a child to another country, it is difficult to obtain re-return of the child due to the length of the appellate process.
❑ True ❑ False

MCLE Answer Sheet No. 77

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:

San Fernando Valley Bar Association
5567 Reseda Boulevard, Suite 200
Tarzana, CA 91356

METHOD OF PAYMENT:

❑ Check or money order payable to "SFVBA"
❑ Please charge my credit card for
❑ $_____.

_____
Credit Card Number Exp. Date

_____
Authorized Signature

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

Name_____
Law Firm/Organization_____
_____
Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

SFVBA's Partner Organizations: A Network of Benefits and Common Goals

By Irma Mejia

The SFVBA has developed strong ties to organizations with interests in improving the legal profession and serving the community. Bar members are able to take advantage of these connections to grow their practice through vetted referrals, improve the public's access to justice and volunteer in the community.

Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

OVER ITS 89-YEAR HISTORY, THE SAN FERNANDO Valley Bar Association has developed strong ties to important law related and community service organizations. The result is a healthy network of lawyers and dedicated volunteers ready to serve the needs and interests of the Valley's legal professionals and their community. Through its network of partner organizations, the SFVBA offers its members terrific opportunities to expand their professional ties, grow their practice, and volunteer their talents in meaningful service to the community.

Attorney Referral Service

The SFVBA's closest partnership is with the Attorney Referral Service (ARS). The ARS was established in 1948 and is one of the longest-running referral services certified by the State Bar of California. It is operated and overseen by the SFVBA and its Board of Trustees but it maintains its own staff, advisory committee, and budget. It was founded to help connect the public with experienced and qualified attorneys. It currently meets the legal needs of Valley residents through a panel of 150 attorneys.

SFVBA Past President David Gurnick, ARS Director Rosie Soto Cohen and VCLF Past President Etan Lorant with a $100,000 donation from the ARS to the VCLF in 2013

Rosie Soto Cohen, the SFVBA's Director of Public Services, explains that the ARS falls under the umbrella mission statement of the bar association which serves as its sponsor organization. It is dedicated to three fundamentals: to educate its members and the public concerning the law, the legal profession, and the judicial system; to promote the growth of the legal profession; and to promote meaningful access to legal representation and the justice system for all persons regardless of their economic or social conditions.

"In short, the ARS sponsors free law related and educational programs for the public, helps attorneys build and grow their practice, and vets attorneys for the purpose of referring potential clients to lawyers," says Cohen.

The ARS also has outlined clear objectives, some of which are regulatory and help ensure its proper certification. These objectives include having a governing committee, an active panel of attorneys to provide legal services, and staff to evaluate and process public requests for legal assistance. It must also provide referrals after taking into consideration various factors, including the type and complexity of the legal problem presented, and the client's financial circumstances, spoken language, and geographical location. The ARS also aims to provide legal and general information and referrals to consumer, government, and other agencies as needed by the individual caller.

As a service to the community, it also operates the Senior Citizens Legal Services Program through local senior centers to meet the needs of the Valley's aging population. It also provides a Modest Means Program for low-income clients and a Limited Scope Representation Program for certain family law cases.

The daily operations of the ARS are handled by Cohen and bilingual referral consultants Lucia Senda and Martha Benitez. Together they connect the public with attorneys best qualified to meet their legal needs and provide information and educational materials at local community centers and events. The ARS is also governed by a committee of 11 SFVBA members who oversee its operations. The ARS is owned and operated by the SFVBA and the Bar's Board of Trustees is always kept informed regarding the operations and finances of the ARS.

The ARS is not ready to rest on the laurels of its 67-year history. Its director is always looking for areas to improve. "We're focusing on even better case vetting, stronger research and auditing processes, geographic expansion to the Antelope Valley, and expansion of marketing operations online," says Cohen. Part of the online marketing strategy requires active participation from members. "We are soliciting ARS member-written blogs and new content in English and Spanish to keep the website fresh and optimized for search engines."

In spite of its many success and established history in the community, the ARS still faces many challenges, including competition in a tough online market. "Remaining relevant to the public is a nationwide concern for all Lawyer Referral and Information Service programs," explains Cohen.

Though it launched a new website last year, there's a lot more to be done to engage clients in a competitive market like Los Angeles. "The challenge will be showing up and staying on page one of Google search results for about 35 practice areas, all on a limited budget," she says. "But

showing up on page one is just the first step. Formulating the best call to action, vetting and processing the referral, and achieving a retainer are important next steps. We have had a strong system in place to follow through with those initial connections and make successful referrals to our panel attorneys."

When asked how SFVBA members can get involved, Cohen lists two ways: apply to become a member of the panel and use the ARS when you need to refer a client to a qualified attorney. "If you are an experienced attorney in the Valley, licensed and in good standing with the State Bar of California, have a business office in the Valley, carry professional liability insurance, and would like referrals from the ARS, then join the ARS panel," she said. In fact, all SFVBA members pay a reduced rate to join the ARS. The public rate for ARS membership is $350 but Bar members pay only $190.

Members may also use the ARS to refer clients they aren't able to help. The ARS's Attorney-to-Attorney referrals are reliable and confidential. "When you use the ARS, you can trust us to recommend a vetted attorney," explains Cohen. "It is a safe way to make a referral."

Valley Community Legal Foundation

The Valley Community Legal Foundation (VCLF) was formed in 1979 as the SFVBA's charitable arm. It is an independent 501(c)(3) charitable organization with a four-pronged mission: to support law-related programs that assist children, families, domestic violence victims and those in need; to enhance community access to the courts; to provide educational opportunities and scholarships to students who demonstrate an interest in law-related careers; and to recognize and honor the achievements of law enforcement and firefighters.

Over its 36-year history, the VCLF has generously supported such important community organizations and programs as Comfort for Court Kids, Haven Hills, and the Northridge Hospital's Center for Assault Treatment Services. It has funded the Children's Waiting Rooms in the Van Nuys and San Fernando courthouses. Those spaces provide safe havens for children whose parents are engaged in court disputes. The Foundation has also recently taken over the SFVBA's Blanket the Homeless program, collecting donations and coordinating the distribution of blankets to homeless and domestic violence shelters throughout the San Fernando Valley.

The tremendous work of the VCLF is carried out by a group of dedicated volunteers. Without a paid staff, the Foundation is able to reduce administrative expenses and direct the maximum amount of its resources to its charitable goals. The Foundation's current president, attorney Seymour Amster, is also a past president of the SFVBA. He leads a Board of Directors made up of volunteers who are active and retired attorneys, judges, and community members.

The Foundation's work is far from over. Amster says that the VCLF's goals this year include continuing the reorganization of its governing body, expanding its programs, and strengthening its relationship with government agencies. "We want to address the needs of those in the community who are not being served and we want to work with local agencies to improve our grants program to better address the needs of Valley residents," he explains.

"Our greatest challenge is to be able to address the legal needs of our community fast enough," says Amster. "There are so many programs that are not being properly funded and have no place to go for funding. There has clearly been a lack of attention and response to the needs of the San Fernando Valley."

Amster cites the Juvenile Drug Treatment Court in Sylmar as an example. "It had no support from the community or funding while the adult drug court in the San Fernando Valley had been supported by us for years. The VCLF has stepped into that void and addressed that situation. They are no longer alone."

VCLF President Seymour Amster (R) and VCLF Board Member, Commissioner Mitchell Block (L), honoring community members who are rehabilitated and employed after completing the Drug Court Program in Van Nuys

The VCLF is prepared and eager to face the continued challenge of addressing the Valley's needs. "We will continue to identify, investigate, and address the needs of our community," he says. "We will continue to serve and make the San Fernando Valley a better place to live."

For attorneys looking to help further the Foundation's mission, Amster has a message. "Be our eyes and ears.

Be aware of the legal needs of our community that can be addressed through charitable funding and activity. Bring those needs to us. And be willing to help us by volunteering or raising money. Together, we will serve our community."

Valley Bar Mediation Center

The SFVBA's newest partner is the Valley Bar Mediation Center (VBMC). Founded by SFVBA members Myer Sankary and Milan Slama, the VBMC was designed to fill the void left by the dismantling of the Los Angeles Superior Court's Alternative Dispute Resolution Program.

The court's ADR Program was the largest of its kind in the country and helped resolve thousands of disputes each year. Its closure added to the backlog of cases in the court system. Low-income litigants were left with few, if any, options for affordable mediation. It's a need that Sankery, Slama, and others hope to solve with this new 501(c)(3) organization.

Deanna Armbruster, VBMC Executive Director, describes its mission as "building community through educating the public about the benefits of mediation and helping the public gain access to justice through professional mediators instead of pursuing litigation."

Milan Slama, Deanna Armbruster and Myer Sankary at VBMC Open House, January 2015

The VBMC is currently governed by a Board of Directors consisting of Sankary, Slama, SFVBA past presidents Adam Grant and David Gurnick, and mediator Enrique Koenig. After a year of hard work and planning, the VBMC launched this year with a diverse panel of 16 local mediators who met the Center's high standards for ethics, education and training. VBMC mediators are committed to providing high quality, affordable mediation services at rates comparable to those charged by the court's defunct ADR Program.

As a new organization, the VBMC still has a lot of work to do to fulfill its mission. Its goals for the year include developing educational training for professionals entering the field of mediation; conducting public outreach to raise awareness about the new Center; establishing a pro bono panel; and enhancing its fundraising program.

Armbruster is prepared to lead the way on all these goals. "We are planning training programs for attorneys to learn mediation skills and to learn about the benefits of pursuing mediation for clients," she says.

"We are reaching out to the Valley's city council members, news agencies, business networks and social service organizations to inform the public about our work." To this end, the VBMC has also partnered with Parents, Teachers and Students in Action for Better Schools and Community (PTSA), a non-profit organization founded by VCLF president Seymour Amster. With PTSA, the Center plans to offer mediation mentorships for high school and college students.

According to Armbruster, VBMC plans to develop a panel of pro bono mediators with the dual purpose of providing dispute resolution services to people who would otherwise not be able to afford them and to provide training to professionals entering the field of mediation. "The panel will help train attorneys who would like to incorporate mediation into their professional portfolio," explains Armbruster.

Of course achieving these goals is dependent upon the VBMC securing enough funds. "The VBMC relies on donations from corporations, foundations, and individuals so it needs to develop a healthy and enduring fundraising program to ensure it can properly serve the community," says Armbruster.

Fundraising and raising public awareness are the Center's greatest challenges. Armbruster explains, "Until now, VBMC has been established exclusively through the pro bono efforts of our team. It needs to develop a sound financial base, while at the same time making sure that the public knows of our work."

SFVBA members can support and become involved with the new Center in a few different ways. They can stay tuned to Bar announcements about upcoming training programs and join the VBMC's mailing list. "Members can also invite us to make short presentations at their firm to learn more about getting involved and to think about VBMC as a first choice when selecting mediators," says Armbruster. For more information, readers may visit their website at www.valleybarmediationcenter.com.

Santa Clarita Valley Bar Association

For many years, the SFVBA and Santa Clarita Valley Bar Association (SCVBA) have maintained a strong partnership, providing a path for networking and collegial solidarity among attorneys who practice or live quite a distance from the city's center.

The mission of the SCVBA is to provide its members with local networking and MCLE opportunities. "We pride ourselves on presenting fun and informative CLE seminars, including the specialty topics such as ethics, substance abuse, and elimination of bias, which are harder to come by," says April Oliver, SCVBA President.

The SCVBA is governed by a board consisting of the president, Immediate Past President Amy Cohen, the President-Elect Sam Price, Treasurer David Rickett, Secretary Claudia McDowell, and three members-at-large, Jeff Armendariz, Cody Patterson, and Taylor Williams. Its staff consists of a single administrative assistant, paralegal Emily Lanza.

SCVBA past presidents from 2004 to 2014

Having just celebrated its tenth year anniversary last year, its goals for 2015 are to increase membership and attendance to its mixers and educational programs. Oliver highlights its Fourth Annual Dinner with the Author and its annual high school speech contest as the SCVBA's key events. "Each year, our biggest challenge is bringing the many attorneys who live and work in the Santa Clarita Valley into our bar association," says Oliver.

Oliver would like to remind SFVBA members that they are welcome at all SCVBA events. "SFVBA members are invited to attend our monthly meetings which are held at the Tournament Players Club in Valencia, our networking mixers, and our popular Dinner with the Author," she says. The two bar associations host an annual joint networking mixer in the summer. SFVBA members should look for the event announcements in this publication and in emails.

Multicultural Bar Alliance of Southern California

The SFVBA has continued its commitment to diversity in the legal profession through its affiliate membership in the Multicultural Bar Alliance of Southern California (MCBA). Founded in 1991 as a response to escalating racial tensions in Los Angeles, the MCBA is a coalition of bar associations working to promote diversity in the legal profession and the community.

The MCBA is co-chaired by attorneys Michelle Sugihara and Patrick Ashouri. They describe the MCBA's mission as dedicated to the inclusion, empowerment, and advancement of underrepresented groups and individuals in the legal profession. Its purpose is to advocate and support the principles of equality, fairness, and justice to improve the legal profession and local communities.

Throughout the year, the MCBA holds several events of its own, while supporting the events of its member bar associations. Popular MCBA seminars include "How to Become a Judge" and "Diversity on the Bench." New events this year will include town hall meetings and workshops on the topic of immigrants' rights. In January it held its Unity Breakfast at a local restaurant in Pasadena. Its complimentary Annual Summer Networking Mixer is held downtown in August.

Membership in the SFVBA allows Valley attorneys to become involved in the MCBA. They are granted free admission to the MCBA Summer Networking Mixer. Members who are interested in becoming involved may contact the SFVBA's MCBA representative, Carol Newman, at carol@anlawllp.com.

The strong partnerships the SFVBA enjoys with the Attorney Referral Service, the Valley Community Legal Foundation, the Valley Bar Mediation Center, the Sana Clarita Valley Bar Association and the Multicultural Bar Alliance are important. They add value to membership and can enhance a law practice. Thanks to these partnerships, SFVBA members are able to meet new and diverse attorneys, join a trusted referral service, and discover new ways to give back to their community.

MCBA Unity Breakfast, Pasadena, January 2015

Inactivity Physiology:

Too Much Sitting Time?

By Carol Kennedy-Armbruster, Ph.D.

WE HAVE KNOWN FOR years that the benefits of regular physical activity to help prevent major health diseases are clear and unanimous. Rarely do you visit your doctor and leave without them saying: "You ought to exercise more and eat better. That will help you maintain and/or improve your overall health."

Current public health guidelines are promoting at least 150 minutes per week of moderate- to vigorous-intensity physical activity in order to be healthy. In order to help ourselves be healthier, we need to consider moving more at work and during our leisure time.

Recent studies have suggested that prolonged bouts of sitting time and lack of whole-body muscular movement are strongly associated with obesity, abnormal glucose metabolism, diabetes, metabolic syndrome, cardiovascular disease risk and cancer, as well as total mortality independent of moderate- to vigorous-intensity physical activity. This may come as a surprise to many exercisers that either run in the morning before work or take a noon walk.

A possible new paradigm of inactivity physiology has been proven by many researchers. This new way of thinking emphasizes the distinction between not exercising and the health consequences of sedentary behavior that is limiting everyday-life non-exercise activity. Until now, the expression "sedentary behavior" has misleadingly been used as a synonym for not exercising. Sedentary time should be defined as muscular inactivity rather than the absence of exercise.

This new paradigm of inactivity physiology or sitting time is based on four issues:

- Sitting and limiting non-exercise activity independently increase disease risk.
- Sedentary behavior (i.e., not choosing to exercise) is another risk factor.
- The molecular and physiological response in the body of too much sitting is not always the same as the response that follows a bout of additional physical activity.
- Prolonged sitting can further increase disease risk in persons who are already insufficiently physically active.

Carol Kennedy-Armbruster, Ph.D. is a senior lecturer at Indiana University School of Public Health, Department of Kinesiology. She can be reached at cakenned@indiana.edu. This article first appeared in the October 2014 issue of Res Gestae by the Indiana State Bar. It is published here with permission.

The solution to this dilemma for many is to look at your sitting time whether you exercise or not and try to reduce it. If you reduce your sitting time you will be healthier overall. This is what the new "inactivity physiology" research is touting.

What kinds of things could you do to reduce sitting time?

- Have a walking meeting versus a sit-down meeting.
- Encourage standing at work versus sitting by looking into standing desks and/or stand at your next meeting occasionally.
- Climb the stairs versus take the elevator.
- Walk to a restroom that is farther from your office than just down the hall.
- Perform 5-10 sit-to-stand movements at your desk per hour to reduce sitting time and increase blood flow in your lower body.
- Walk to deliver a message within your office versus sending it via email.
- Walk/pace while you are having a phone conversation in your office.

Some have touted this lack of movement in our day (inactivity physiology) as a health risk that could be as great as smoking.[1] A simple Google search on the topic will yield even more information on how sitting time is not only detrimental to our health but how we also don't like it.

So, why do we sit so much? Is it because the "norm" is to sit at work? Over the last 40 years we have replaced much of our daily movement with either technology and/or devices. Think about it. When was the last time you opened your garage door by hand? Raked your leaves using a real rake and not a blower? Mowed your lawn using a mower that was not self-propelled? Opened a can using a regular can opener? Drove around a parking lot to find the closest space? Shopped online versus going to the mall because it was easier?

These are just a few examples of ways we have replaced daily movement with activities that are less intense and require less muscle movement. It's no wonder we are discussing inactivity physiology as a health risk factor. There is a growing body of literature on this topic, including the recently released book *Get Up! Why Your Chair is Killing You and What You Can Do About It* by Dr. James A. Levine (Palgrave Macmillan Trade, July 2014).

Awareness is the first factor in tackling a health risk. Look around and see what you can do to move more, sit less and be well!

[1] Kelly Casey, "Is sitting the new smoking?" *Pittsburgh Quarterly, Summer 2012,* available at http://pittsburghquarterly.com/index.php/Personal-health/is-sitting-the-new-smoking.html, accessed January 9, 2015.

NEW MEMBERS

Roxana Ahmadian
Law Offices of Roxana Ahmadian
Encino
Adoption

Nisha K. Dandekar
Pines Law Group
Encino
Family Law

Michael J. Fedalen
Huang, Fedalen & Lin LLP
Encino

Christina P. Gabar
Oldman, Cooley, Sallus, Birnberg & Coleman
Encino
Estate Planning, Wills and Trusts

The following joined the SFVBA in January 2015:

Irina Geller
Santa Monica
Litigation

Kaveh Keshmiri
Law Offices of
Marcia L. Kraft
Woodland Hills

Rosemary Lemmis
Davies Lemmis Raphaely
Law Corporation
Calabasas
Real Property

Magda Madrigal
Los Angeles
Landlord/Tenant

Ike Sherman
MCIS Lawyers
Woodland Hills
Personal Injury

Archibald M. Smith
Malibu
Adoption

Krista Thayer
Reseda
Law Student

Illustration by Gabriella Senderov

New Laws for 2015

By Harmon Sieff

AS A LAWYER OF FIRST RESORT, I CANNOT always predict the questions I will receive from new or existing clients, so it has become my habit to monitor published court decisions and statutes of general interest. This article references only a fraction of new legislation adopted during 2014 which may be of interest to our clients.[1]

Ride Sharing

Personal auto insurance no longer covers commercial activities of transportation network companies which must now provide extended insurance coverage for their drivers. (AB 2293)

Notaries

A new form must be completed by a notary public clarifying that the certification verifies only the signer's identity and not the truthfulness of the document. (SB 1050)

Pets

Our local assembly member, Matt Dababneh, sponsored a new law to protect purchasers of pet insurance policies. (AB 2056)

Local governments may allow pet dogs in outdoor dining areas. (AB 1965)

Real Estate Sales

The detailed disclosures required for buyers and sellers of residential property now apply to commercial property transactions. (SB 1171)

County recorders may no longer conceal the amount of documentary transfer tax paid for a transaction, making it easier for the public to learn prices. (RT sections 11932 and 11933)

Unpaid Interns

Volunteers are now protected by the same laws which prohibit discrimination and harassment against paid employees. (AB 1443)

Guns

Judges can issue Gun Violence Restraining Orders to enjoin named persons from possessing or owning firearms or ammunition. (AB 1014)

Subcontracted Workers

A company with over 25 workers which hires laborers through a third-party contractor now shares responsibility with the contractor for the payment of proper wages and providing workers' compensation. (AB 1897)

We recommend paying very close attention to the internal operations of third-party contractors and updating contracts and insurance accordingly. Joint liability can be very costly.

Tutoring
Academic tutoring companies must disclose to parents of minors how they check teachers' backgrounds. (AB 1852)

Sports
Professional team franchises cannot deduct from income taxes any fine or penalty assessed by a sports league. (AB 877)

Kill Switches
Smartphones sold in California after July 1 must include at the time of sale a technological mechanism to render the device inoperable when not possessed by an authorized user. (SB 962)

Paparazzi
It is a constructive invasion of privacy to attempt, in a "reasonably offensive manner," to capture images or sounds of another engaging in private or family activity using a device, including a drone, unless the image or sound could have been captured, without trespass, without the device. (AB 2306)

Agriculture
There are new regulations of certified farmers' markets, labeling requirements for shell eggs, and rules for beekeeping on public lands. (AB 2185, 1414, 1871)

The freedom to grow edible fruits and vegetables at home is now a protected right. (AB 2561, CC 1940.10, and 4750)

Alcohol
There is a bucket full of new statutes changing the regulation of beer and wine distribution. (AB 2004, 2010, 2182, 2609, SB 1235)

Privacy
Physically obstructing, intimidating, or interfering with a person trying to enter or exit a defined facility is now an unlawful constructive invasion of privacy. (AB 1256)

Statutory regulations protecting the privacy of certain personal information have been strengthened. Actionable stalking includes a pattern of conduct intended to place another under surveillance. (AB 1356)

Consumers
Provisions in certain contracts preventing a consumer from criticizing its seller are void and unenforceable. (AB 2365)

Furniture
Upholstered furniture must be labeled to indicate if it is flame retardant; violators will be fined. (SB 1019)

Revenge Porn
An individual has a private right to sue another who intentionally or recklessly distributes a sexually explicit photograph or other image or recording of the individual without consent. (AB 2643)

Workplace
There are new requirements for anti-harassment training (AB 2053), child labor violations (AB 1680), and compensation for workers' rest, recovery (SB1360), and waiting time (AB 1723), and for companies to display posters, provide written notices, include specific information on paycheck stubs, and retain personnel records for three years.

Formal government wage orders describing requirements for specific industries can be viewed at https://www.dir.ca.gov/iwc/wageorderindustries.htm.

Homeowner Associations
Those which irrigate with recycled water may fine owners for reducing the watering of landscaping. (SB 992)

Homicide
The defense of "panic" can reduce a murder charge to manslaughter. (AB 2501)

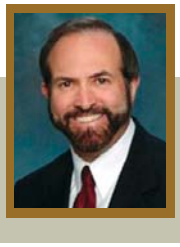
Sick Days
Beginning July 1, workers are entitled to one hour of sick leave for every 30 hours worked up to three days annually. (AB 1522)

Miscellaneous
Tractor-trailers can be five feet longer in order to accommodate an aerodynamic device. (SB469)

New regulations govern locksmiths, self-storage facilities, and massage therapists. (AB 759, 983, 1147)

[1] The *Los Angeles Daily Journal* generously donated to the SFVBA copies of its annual compendiums (78 pages) of new California statutes. Feel free to stop by the bar office, say hello, and collect your free copy. We thank the *Daily Journal* for printing a compendium of statutes adopted during 2014.

Harmon Sieff, Past President of the Santa Monica Bar Association, serves as a general counsel representing small businesses and individuals with transactions and disputes. He can be reached at siefflaw@aol.com.



Attorney Referral Service
San Fernando Valley Bar Association

Referring the Best Attorneys Since 1948

Attorney Referral Service

@ReferralsSFVBA

The **Attorney Referral Service** of the **SFVBA** is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

(818) 227-0490
www.sfvbaReferral.com

San Fernando Valley Bar Association
founded in 1926

MEETS ABA STANDARDS FOR LAWYER REFERRAL
AMERICAN BAR ASSOCIATION
THE RIGHT CALL FOR THE RIGHT LAWYER

Certified Lawyer Referral Service
No. 0006
Pursuant to State Bar Rules and Regulations

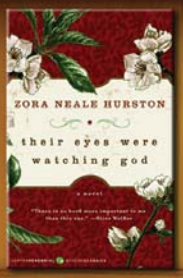
Consensus ad idem

Favorite Law Novel

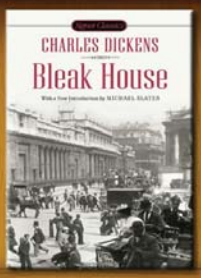
The recent discovery of Harper Lee's second novel, *Go Set a Watchman* (Harper, July 2015), has got the staff of *Valley Lawyer* thinking about law novels. *Valley Lawyer* wants to know: What is your all-time favorite law novel? Review the options below and check your email for your survey invitation. Not on our email list? Submit your vote to editor@sfvba.org. Poll participants will be entered into a drawing for dinner and a movie.*

The list below is by no means exhaustive. Let us know on Facebook or Twitter which titles we missed and which we should have left out.

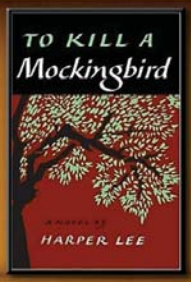
*Only current SFVBA members are eligible to win.



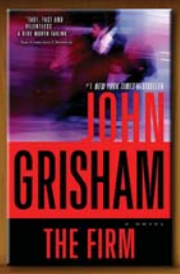
Their Eyes Were Watching God
by Zora Neale Hurston (1937)



Bleak House
by Charles Dickens (1853)

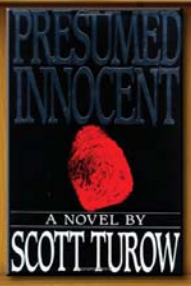


To Kill A Mockingbird
by Harper Lee (1960)

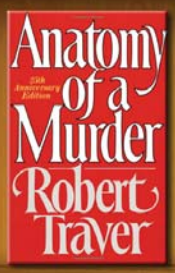


The Firm
by John Grisham (1991)

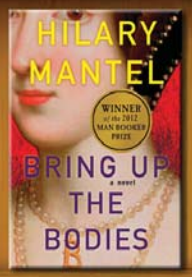
The Paper Chase
by John Jay Osborn Jr. (1971)



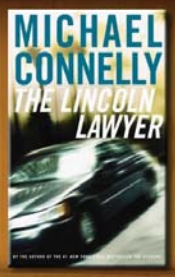
Presumed Innocent
by Scott Turow (1987)



Anatomy of a Murder
by Robert Traver (1958)

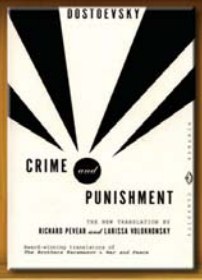


Bring Up the Bodies
by Hilary Mantel (2013)

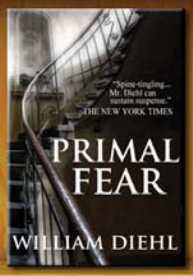


The Lincoln Lawyer
by Michael Connelly (2012)

Native Son
by Richard Wright (1940)



Crime and Punishment
by Fyodor Dostoevsky (1866)



Primal Fear
by William Diehl (1993)

GROW YOUR PRACTICE. PROMOTE YOUR SERVICE. MARKET YOUR FIRM.

ADVERTISE WITH VALLEY LAWYER

Display Advertising Rates Per Issue

Advertising must be inserted within one year of the first insertion to earn the frequency discounts. All ads are full color.

Size	1x	3x	6x	12x
Full Page	$795	$730	$665	$635
2/3 Page	$530	$490	$450	$425
1/2 Page	$430	$395	$360	$345
1/3Page	$280	$260	$235	$225
1/4 Page	$245	$230	$220	$210
1/6 Page	$155	$145	$130	$125

Full Page Ad Premium Placements

Call for availability. Requires consecutive 12-month contract.

Back cover	$1270
Inside front cover	$935
Inside back cover	$935
Page 3	$860
Page 4	$860
2-page centerfold	$1270
MCLE article sponsor	$1035

Additional Advertising Opportunities

Inserts

Inserts are accepted into *Valley Lawyer*. Price is determined by size, weight and method of insertion. A sample of the insert must be submitted before a final price can be quoted. Minimum price is $800.

Ad Specs

All ads are full color. Ads may be sent on a CD or via email. *Valley Lawyer* requests its advertisers to provide **ready to print artwork*** in one of the following digital formats:

- PDF (Fonts must be embedded. Cropmarks are not necessary.)
- Illustrator EPS (Fonts must be converted to outlines.)
- Photoshop TIFF or JPEG (300 dpi)

All files must be high resolution (300 dpi). Web graphics are very low resolution and are not recommended.

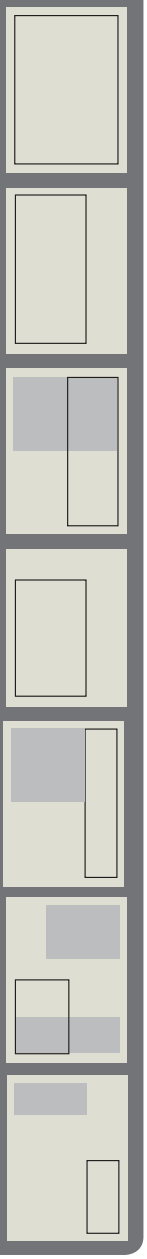
* **Additional graphic design services are available. Extra charges will apply.**

Classified Advertising Per Issue

	Member	Non-Member
25 words or less	$45	$90
Each additional word	$1.80	$3.60
Add logo	$30	$55

Ad Layouts

Full Page	
no bleed	7.375" x 9.875"
bleed	8.625" x 11.125"
2/3 Page	
trim	4.85" x 9.875"
1/2 Page	
vertical	3.65" x 9.875"
horizontal	7.375" x 5"
1/2 Page Island	
trim	4.85" x 7.5"
1/3 Page	
vertical	2.385" x 9.875"
square	4.85" x 4.85"
1/4 Page	
vertical	3.65" x 5"
horizontal	5" x 3.65"
horizontal wide	7.375" x 2.5"
1/6 Page	
vertical	2.375" x 4.85"
horizontal	4.85" x 2.375"



Valley Lawyer | 2015 Editorial Calendar

January
Submission Deadline: **November 15, 2014**
New Laws

February
Submission Deadline: **December 1, 2014**
The Courts

March
Submission Deadline: **January 5, 2015**

April
Submission Deadline: **February 2, 2015**

May
Submission Deadline: **March 2, 2015**

June
Submission Deadline: **April 1, 2015**

July
Submission Deadline: **May 1, 2015**

August
Submission Deadline: **June 1, 2015**
Special Insert: *Board of Trustees Election Pamphlet*

September
Submission Deadline: **July 1, 2015**

October
Submission Deadline: **August 3, 2015**

November
Submission Deadline: **September 1, 2015**
New Lawyers

Bonus Distribution: *State Bar Swearing-In Ceremony, Pasadena, CA*

December
Submission Deadline: **October 1, 2015**
Cover Auction Winner/Public Service

Articles are not limited to content focus. *Valley Lawyer* seeks articles covering all areas of law, plus articles focusing on the courts and judiciary, lifestyle, law practice management, social media and legal marketing, as well as humorous commentary about the practice of law. Submit articles and ideas to editor@sfvba.org. Word count for feature article is 1,500-3,000 words; word count for MCLE article is 3,000-4,000 words, including 20 true and false questions for MCLE test. Word count for column (i.e., Case Study, Law Practice Management, Social Networking) is 1,000-1,500 words.

Advertising Policies

- All material must be submitted by the first business day of the month preceding the month of publication.
- The SFVBA reserves the right to refuse any advertisement.
- All cancellations must be submitted in writing and received by the first day of the month prior to date of publication. Cancellation may void frequency discounts. If advertiser has not used the full amount of advertising contracted for, a short rate will be charged.
- If advertiser places more advertisements within contract year than originally contracted and advertiser is eligible for lower rate, advertiser will receive eligible frequency discount on the new contract.
- All advertisers must pay for the first issue in advance before the ad is run.
- The SFVBA may stop inserting the advertiser's ad in *Valley Lawyer* if the payment of any bill is past due.
- The SFVBA is authorized to repeat previous advertisement if new copy is not received by deadline.
- Position of advertisements will be guaranteed only when premium is paid. Special requests will be acknowledged and courtesy extended when possible.
- If a multiple schedule of advertising is placed by an insertion order, and issue months for advertising are not indicated, the SFVBA will assume ads will run consecutively unless notified in writing before closing date.

For more information or to insert an ad, contact (818) 227-0490, ext. 101 or epost@sfvba.org. To submit an article or idea, contact editor@sfvba.org or (818) 227-0490, ext. 110.

San Fernando Valley Bar Association | @sfvba | San Fernando Valley Bar Association

San Fernando Valley Bar Association
5567 Reseda Boulevard, Suite 200 • Tarzana, CA 91356
Tel (818) 227-0490 • Fax (818) 227-0499 • info@sfvba.org • www.sfvba.org

CLASSIFIEDS

ATTORNEY-TO-ATTORNEY REFERRALS

STATE BAR CERTIFIED WORKERS COMP SPECIALIST

Over 30 years experience-quality practice. 20% Referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

SPACE AVAILABLE

WOODLAND HILLS

Two executive window offices, one large interior office (furnished), secretarial bay, and storage space available for sublease. Use of kitchen and conference rooms included. Beautiful office complex. Contact Carol Newman (818) 225-0056, carol@anlawllp.com.

Two window offices (15x10) in Warner Center for lease. Use of conference room/kitchen. Call Laurie at (818) 992-1940.

SUPPORT SERVICES

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

GRAPHIC ARTIST

Creating affordable, high-quality designs that will promote your business with simplicity and style. Offering a wide range of styles & personal atention, making sure your project is always delivered on time. Logo Design • Ad Design • Flyers & Posters • Brochure Design • Stationery • Postcards. Call Marina at (818) 606-0204.

- SFVBA membership for every firm attorney and paralegal
- Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website
- Recognition and 5% discount on tables at Bar-wide events, including Judges' Night
- Invitations to President's Circle exclusive events with bench officers, community leaders and large firms

WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEMONSTRATED COMMITMENT AND LEADERSHIP IN SUPPORTING THE LEGAL PROFESSION AND ITS WORK IN THE COMMUNITY.

Alpert Barr & Grant APLC
Christie Parker & Hale LLP
Law Offices of Goldfarb Sturman & Averbach
Kantor & Kantor LLP
Law Offices of Marcia L. Kraft
Pearson Simon & Warshaw LLP
Greenberg & Bass LLP
Oldman Cooley Sallus Birnberg & Coleman LLP
Stone | Dean LLP
Lewitt Hackman Shapiro Marshall & Harlan ALC
Neighborhood Legal Services of Los Angeles County
Nemecek & Cole
Parker Milliken Clark O'Hara & Samuelian APC
University of West Los Angeles School of Law

Contact SFVBA Executive Director Liz Post at (818) 227-0490, ext. 101 or epost@sfvba.org to sign up your firm today!

Dear Phil

Don't Let Email Turn into Snail Mail

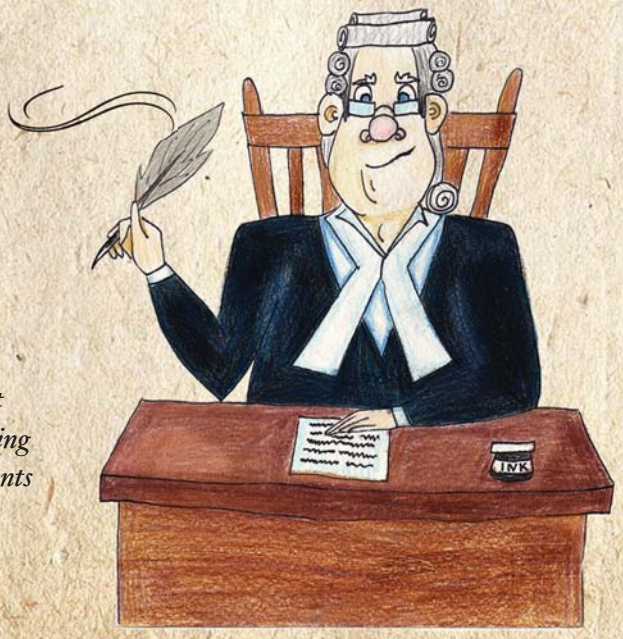


Illustration by Gabriella Senderov

Dear Phil,

I am an experienced attorney handling a variety of matters in my small general practice. It's getting harder and harder to get responses to important emails from entities and individuals. I'm wasting way too much time sending duplicate messages, telephoning, and begging for responses. I hate to bill clients for time that just seems to be going down a black hole.

Hoping to hear back from you,

The Invisible Man

EMAIL IS CURRENTLY ONE OF THE BUSINESS community's best communication tools. It's easy, fast, and lends itself to all-day multi-tasking. But it is a double-edged sword. Because it is easy and popular, most time-starved attorneys (and everyone else) receive hundreds of email messages each day. So your important messages can easily get lost or ignored. Here are some techniques to increase the rate of response.

Understand Priorities (Your Readers', Not Yours)
Readers with limited amounts of time (i.e., everyone) unconsciously sort messages by priority. Identify the receiver's priorities (and areas of frustration) before you write. Make an obvious connection in both the subject line and the body of the email between the reader's priorities and your message.

It's Not about You (Sorry)
Email messages should hew closely to the reader's needs (not so much the sender's). Count the number of times you use the pronoun "I" vs. "you." The tighter the focus on "you," the better the response rate.

Subject Lines are for Strategy
Recipients evaluate an email's importance by its subject line. Keep it brief, relevant and specific. Identify yourself, state a narrow subject, and cite a benefit to the reader. Be clear, never cute. Subject lines must distinguish your message from the tidal wave of emails readers routinely receive.

Not the Time to Impress
Lots of verbiage, lots of big words, and lots of complex sentences do not impress professionals (but they do annoy, frustrate, and bore). Busy readers want information intelligently presented, that answers their questions, or addresses their needs. If you have specific questions or informational nuggets, use bullet points (three, tops).

Internal Headings Navigate Your Story
Internal headings should be couched in conclusory language, and include a benefit to the reader.

Clearly Ask for What You Desire
If busy recipients don't know what you want, they won't respond. Succinctly state the goal or action that you seek.

Stick With Number One (Screens)
Busy readers move longer messages aside for later (or maybe never) consideration. Readers attend to shorter messages sooner, often right away. Always think single-screen.

Be Persistent (and Polite)
When a reader seems to be ignoring your email, don't assume that this is a rejection. The message could be in the spam folder. It could be coming through garbled, the recipient could be confused about the sender's identity, or it could be misdirected, among other computer glitches. In response to no response, you should follow up via other channels—telephone, snail mail, brief personal note, etc.

Drop me a line anytime. I look forward to receiving your email.

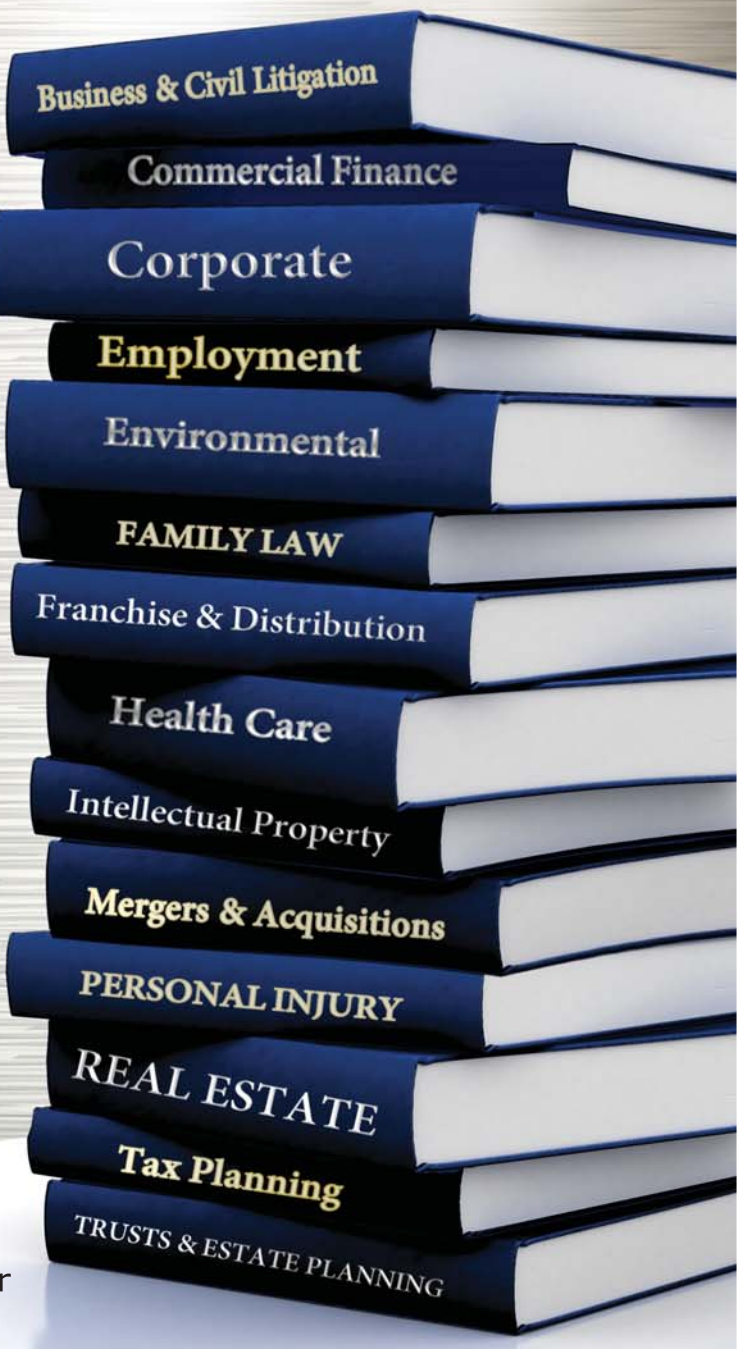
Best,

Phil

Dear Phil is an advice column appearing regularly in *Valley Lawyer* Magazine. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer*'s Editorial Committee. Submit questions to editor@sfvba.org.

LH Lewitt Hackman

Lewitt, Hackman, Shapiro, Marshall & Harlan
A Law Corporation



2015 TOP RANKED LAW FIRMS
BASED ON AV
AV PREEMINENT™ Martindale-Hubbell Lawyer Ratings

16633 Ventura Boulevard, Eleventh Floor
Encino, California 91436

www.lewitthackman.com
818.990.2120